

## Request for Proposals

**SOLICITATION TITLE: Construction Management at Risk (CMAR), Phase II – Rhode Island Veterans Home Facilities and Renovations – Bristol, Rhode Island**

**SOLICITATION NUMBER: 7548998 PHII**

**BID PROPOSAL SUBMISSION DEADLINE: October 27, 2014 at 10:30 a.m. (EST)**

### MANDATORY SITE VISIT

**Location:** Rhode Island Veterans Home  
480 Metacom Avenue  
Bristol, Rhode Island 02809

**Date:** October 14, 2014

**Time:** 10:00 a.m.

*Bidders must attend the mandatory site visit. The bidder's representative must register with the Division of Purchases at the mandatory site visit and identify the bidder he or she represents on the sign-in sheet.*

Questions about this solicitation must be emailed and received by the Division of Purchases at [questions@purchasing.ri.gov](mailto:questions@purchasing.ri.gov) no later than **October 17, 2014, at 4:00 p.m. (EST)** in a *Microsoft Word attachment* identified with the corresponding solicitation number. Questions, if any, and responses will be posted on the Division of Purchases website at [www.purchasing.ri.gov](http://www.purchasing.ri.gov) as an addendum to this solicitation. Questions may be submitted only by prequalified bidders (bidders named on the prequalified bidders' list included with this solicitation).

**BID BOND:** A bid bond in the amount of \$100,000 from a surety company authorized to conduct business in Rhode Island will be required.

**PAYMENT and PERFORMANCE BOND:** A bonding capacity commitment letter from a surety company authorized to conduct business in Rhode Island will be required.

**BIDDER CERTIFICATION COVER FORM:** Bidders must complete and submit a Bidder Certification Cover Form with each bid proposal.

NAME OF BUYER: Thomas Bovis

TITLE OF BUYER: Interdepartmental Project Manager

## **REQUEST FOR PROPOSALS**

Solicitation Date: October 7, 2014

Project: Construction Management at Risk (CMAR) – Phase II  
Rhode Island Veterans Home Facilities and Renovations

Term: Estimated 36 months from issuance of Purchase Order  
(6 months preconstruction; 30 months construction)

Owner: The State of Rhode Island Department of Administration  
Division of Capital Projects and Property Management  
One Capitol Hill  
Providence, Rhode Island 02908-5855

User Agency: Rhode Island Department of Human Services  
Louis Pasteur Building  
57 Howard Avenue  
Cranston, Rhode Island 02920

Owner's Program  
Manager: Peregrine Group, LLC  
Rumford Center, Building No. 3  
20 Newman Avenue – Suite 1005  
East Providence, Rhode Island 02916

Awarding Authority: The State of Rhode Island Department of Administration  
Division of Purchases  
One Capitol Hill – Second Floor  
Providence, Rhode Island 02908-5855

The State of Rhode Island Department of Administration, through its Division of Purchases, is soliciting proposals on behalf of the User Agency, from prequalified bidders to provide construction manager at risk services in accordance with the terms and conditions of this solicitation.

Bidders are requested to submit bid proposals by the bid proposal submission deadline.

This solicitation contains, and is subject to the terms and conditions of, the Request for Proposals, the Prequalified Bidders List, the Cost Proposal Form, a Bid Checklist (with applicable forms), AIA A133 - 2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor, as modified by the Owner, AIA A201 – 2007 General Conditions of the Contract for Construction, as modified by the Owner, and the RIVIP Bidder Certification Cover Form. The solicitation is available at

[www.purchasing.ri.gov](http://www.purchasing.ri.gov).

Following selection of the successful bidder, and 100% completion of the Construction Documents (Plans and Specifications), the Owner and the successful bidder will negotiate and enter into an AIA A133 - 2009 Exhibit A Guaranteed Maximum Price ("GPM") Amendment.

This solicitation details the requirements of the Owner and the User Agency for this Project by describing the purpose, scope, description, minimum requirements and expectations, qualifications, and capability of the bidders, evaluation criteria, and other requirements. Bid proposals will be evaluated by weighted criteria.

The award of the contract pursuant to this solicitation will be made in the best interests of the State of Rhode Island on the basis of the relative technical merits and other evaluation factors of the bid proposals. At the opening of the bid proposals received by the Division of Purchases, the names of bidders who have submitted bid proposals will be made available; each bid proposal will be available as a public record upon the award of the contract pursuant to the solicitation. After evaluation, the Division of Purchases may invite bidders to explain or clarify bid proposals and may request a "best and final offer." At the end of the evaluation process, the Division of Purchases may also engage in negotiations to secure more advantageous terms or reduce cost.

# **I. INSTRUCTIONS TO BIDDERS**

## **Compliance with Instructions to Bidders**

These Instructions to Bidders contain terms and conditions that will govern the preparation and submission of a bid proposal and any contract awarded pursuant to this solicitation.

Bidders must comply with each and every requirement of these Instructions to Bidders. Any failure to comply with any requirement may result in the determination of a nonresponsive bid proposal and/or the rejection of the bid proposal.

## **Priority of Terms and Conditions**

The terms and conditions in these Instructions to Bidders *supersede* any and all inconsistent or conflicting terms and conditions in the "Prequalification – Construction Management at Risk (PCM), Phase I – Rhode Island Veterans Home Facilities and Renovations – Bristol, RI" Solicitation and any other provision of any other document in this solicitation or in the bid proposal and govern this solicitation, the bid proposal, and any contract awarded pursuant to this solicitation.

## **Eligibility to Bid**

Only bidders who have been prequalified by the State of Rhode Island during Phase I shall be eligible to submit bid proposals for this Project. A list of the prequalified bidders is included with this solicitation.

## **Offer to Contract**

Bid proposals constitute an offer to contract with the Owner on the terms and conditions contained in the solicitation, the laws of the State of Rhode Island, including all procurement statutes and regulations (available at [www.purchasing.ri.gov](http://www.purchasing.ri.gov)), and applicable federal and local law, all of which are incorporated into this solicitation and any contract awarded pursuant to this solicitation by this reference.

A draft of the form of contract (AIA A133 - 2009 Standard Form of Agreement between Owner and Construction Manager as Constructor, as modified by the Owner, and AIA A201 – 2007 General Conditions of the Contract for Construction, as modified by the Owner) is included with this solicitation. The terms and conditions of the contract will be further developed during, and following, the selection process. The Owner reserves the right to make further revisions to the contract. Bidders must provide, in writing, any proposed changes to the terms and conditions of the contract as part of their bid proposal. The Technical Review Committee will consider the favorability to the Owner of any proposed changes to the contract as a criterion for evaluating and ranking the bidders.

## **Comprehensive Inspection and Review**

Bidders are responsible for carefully reviewing all of the requirements of this solicitation, inspecting the project location, including checking and/or verifying site conditions, any limitations, and other details, prior to preparing and submitting its bid proposal. Failure to submit a complete bid proposal may result in rejection of the bid proposal. Claims for additional costs or time resulting from the bidder's failure to review this solicitation carefully will not be considered.

## **Addenda**

Responses to questions from bidders, interpretations of specifications, changes by the Owner prior to the bid proposal submission deadline, and supplemental instructions and terms will be posted as addenda on the Division of Purchases website at [www.purchasing.ri.gov](http://www.purchasing.ri.gov), and all addenda become incorporated into this solicitation upon posting. Bidders are responsible for checking the website to determine the issuance of any addenda. No addenda will be posted within the 5-day period preceding the bid proposal submission deadline except for an addendum withdrawing the solicitation or extending the bid proposal submission deadline.

## **Mandatory Site Visit**

Bidders must attend the scheduled site visit at the Project location. Bid proposals from bidders who do not attend this site visit will not be considered.

## **Costs**

The bidder is responsible for all costs and expenses to develop and submit a bid proposal in response to this solicitation or to provide clarification or additional information about its bid proposal.

## **Preparation of Bid Proposal**

Bid proposals must be prepared and submitted in accordance with the instructions in this solicitation. This solicitation contains a Bid Preparation Checklist to assist the bidder in preparing a bid proposal for submission.

## **Submission of Bid Proposal**

Each bid proposal must be submitted in a separate sealed envelope or package and include: (i) one original technical proposal in a 3-ring binder, five (5) paper copies of the technical proposal unbound and fastened only with binder clips, and one electronic copy of the technical proposal; (ii) one original cost proposal; (iii) one original signed (in ink) Bidder Certification Cover Form; and (iv) one original signed (in ink) IRS Form W-9 (*dated not more than one year prior to the date of submission*).

The technical proposal *may* include a transmittal letter signed by an authorized representative of the bidder and *must* include a table of contents, with sections separated by tabs, and be limited to ten (10) pages, excluding exhibits and appendices. The signed original RIVIP Bidder Certification Cover Form should be included as the first tab in the original technical proposal with copies of the RIVIP Bidder Certification Cover Form in the copies of the technical proposal. The electronic copy of the technical proposal (*readable only* CD-Rom in .pdf format) must be placed inside the original technical proposal. The IRS Form W-9 (downloadable from the Division of Purchases website at [www.purchasing.ri.gov](http://www.purchasing.ri.gov)) should be included only in the original technical proposal.

The cost proposal must be placed inside a *separate sealed envelope* marked "Cost proposal," and a copy of the cost proposal in electronic format (*readable only* CD-Rom in .pdf format) must be placed in that same *separate sealed envelope*.

The *outside* sealed package and each *inside* sealed envelope must include the bidder's name and address and the specific "Solicitation Number," "Solicitation Title," and the "Bid Proposal Submission Deadline" marked in the upper left-hand corner. The bid proposal must be delivered (via mail, messenger service, or personal delivery) to the Division of Purchases and be date-stamped receipted by the date and time specified for the bid proposal submission deadline.

At the bid proposal submission deadline, all bid proposals timely submitted will be opened and the names of the bidders read aloud in public. Bidders should mail bid proposals sufficiently in advance of the bid proposal submission deadline to ensure timely delivery to the Division of Purchases or, when delivering a bid proposal in person or by messenger, should allow additional time for parking and clearance through security checkpoints. Bid proposals must be addressed to:

Rhode Island Department of Administration  
Division of Purchases  
One Capitol Hill, Second Floor  
Providence, RI 02908-5855

Bid proposals that are not received by the Division of Purchases by the bid proposal submission deadline for whatever reason will be deemed late and will not be considered. The submission time will be determined by the time clock in the Division of Purchases. Postmarks will not be considered proof of timely submission.

### **Bid Price**

The bidder must submit its cost proposal to perform all of the requirements specified in the solicitation, including the cost of any bonds. Unless otherwise specified in this solicitation, all pricing will be considered firm and fixed.

## **RIVIP Bidder Certification Cover Form**

The bidder must download, complete, sign, and submit the RIVIP Bidder Certification Cover Form for this solicitation as the first document in the technical proposal. The RIVIP Bidder Certification Cover Form is downloadable with the solicitation from the Division of Purchases website by logging in as a RIVIP vendor and clicking on the applicable "Solicitation Number."

## **Public Record**

Bid proposals submitted in response to this solicitation are public records pursuant to the Rhode Island "Access to Public Records Act," R. I. Gen. Laws §§ 38-2-1 *et seq.* Each bid proposal will be available for inspection upon request as a public record upon the award of the contract pursuant to this solicitation. Pursuant to the "Access to Public Records Act," bidders have the right to identify in their bid proposals any trade secrets or commercial or financial information which is of a privileged or confidential nature and make a request (nonbinding on the Division of Purchases) that such trade secrets or information not be made available to the public.

## **Subcontractors**

The Division of Purchases intends to award the contract pursuant to this solicitation to a primary bidder who will assume overall responsibility for this Project. Subcontracts are permitted under the contract awarded pursuant to this solicitation. All subcontractors and the scope of their participation must be approved by the Owner's Program Manager, the User Agency, and the Owner. In the event that the successful bidder intends to perform any of the work with its own workforce, then the successful bidder must solicit bids for such work and demonstrate that it will perform the work for a fee equal to or lower than the lowest responsible bid.

## **Taxes**

The State of Rhode Island is exempt from federal excise taxes and state and municipal sales and use taxes. The bidder shall not include such taxes in any prices in the bid proposal.

## **Bid Surety**

Bidders must furnish, with their bid proposals, either a bid bond from a surety licensed to conduct business in the State of Rhode Island or a certified check payable to the State of Rhode Island in the amount of \$100,000. An attorney-in-fact who executes a bond on behalf of the surety must provide a certified current copy of the power of attorney. A successful bidder who fails to submit the additional documentation required by the tentative letter of award and/or fails to commence and pursue the work in accordance with the contract awarded pursuant to this solicitation may be required to forfeit, at the discretion of the State Purchasing Agent, the full amount of the bid surety

as liquidated damages. The Division of Purchases will retain the bid surety of all bidders until the earliest of: (i) the issuance of the Purchase Order; (ii) the 61<sup>st</sup> day following the bid proposal submission deadline; or (iii) the rejection of all bid proposals.

### **Divestiture of Investments in Iran Requirement**

No bidder engaged in investment activities in Iran as described in R.I. Gen. Laws § 37-2.5-2(b) may submit a bid proposal to the Division of Purchases. Each bidder submitting a bid proposal is required to certify that the bidder does not appear on the list maintained by the General Treasurer pursuant to R.I. Gen. Laws § 37-2.5-3.

### **Domestic Steel**

Any steel products required by the plans and specifications for the Project described in this solicitation must be formed, extruded, forged, cast, fabricated, or otherwise processed from steel made in the United States.

### **Withdrawal**

A bidder may withdraw its bid proposal at any time prior to the bid proposal submission deadline. Bid proposals are irrevocable for a period of 60 days following the bid proposal submission deadline.

### **Reservation of Rights**

The Division of Purchases reserves the right, at any time, for any reason, in its sole discretion, to: (i) revoke, suspend, or terminate this solicitation; (ii) accept or reject any and all bid proposals, in whole or in part; (iii) waive any technical defects, irregularities, or omissions in any bid proposals; and/or (iv) terminate any contract awarded pursuant to this solicitation, with or without cause.

### **Award**

The Division of Purchases, in its sole discretion, may require oral presentations from, and participate in discussion with, one or more bidders, and may engage in competitive negotiation with two (2) or more bidders. The successful bidder will receive a tentative letter of award from the Division of Purchases with instructions for the bidder to submit further documentation. The successful bidder shall be authorized to commence work only upon the issuance of the Purchase Order by the Division of Purchases and, in addition, an authorization from the User Agency. The issuance of the Purchase Order and the continuation of any contract awarded pursuant to this solicitation is contingent upon the availability of funds.

### **Continuation of Contract**

The continuation of the contract awarded pursuant to this solicitation beyond June 30 of the current fiscal year is subject to the availability of funds and a determination of continued need by the Owner and the User Agency.

### **Payment and Performance Bonds**

Bidders must furnish, with their bid proposals, a bonding capacity commitment letter from a surety licensed to conduct business in the State of Rhode Island. An attorney-in-fact who executes a commitment letter on behalf of the surety must provide a certified current copy of the power of attorney. The successful bidder will be required to furnish a payment and performance bond from a surety licensed to conduct business in the State of Rhode Island upon the tentative award of the contract pursuant to this solicitation. In the event that the Owner authorizes any services in advance of its approval of the final construction budget and the GMP amendment, the successful bidder will be required to furnish one or more initial payment and performance bonds in amounts determined by the Owner, in its sole discretion.

### **Prevailing Wages**

The successful bidder and its subcontractors must pay their workers at the applicable prevailing wage rates (adjusted every July 1) for the various trades on a weekly basis, pay their workers one and one-half times the applicable prevailing wage rates for each hour worked in excess of 8 hours in any one day or 40 hours in any one week, submit certified weekly payroll forms on a monthly basis to the user agency, and maintain a certified prevailing wage daily log at the Project site. Prevailing wage posters and rate schedules, available at the Rhode Island Department of Labor and Training website at [www.dlt.ri.gov](http://www.dlt.ri.gov), must be posted at the Project site.

### **Apprenticeship**

The successful bidder must employ apprentices on this project in accordance with the apprentice to journeyperson ratio for each trade approved by the State Apprenticeship Council. The bidder must complete, sign, and submit the General Contractor Apprenticeship Certification Form, included in the solicitation, with the bid proposal.

The successful bidder will also be required to complete, sign, and submit the General Contractor Apprenticeship Re-Certification and Certification Form following receipt of the tentative letter of award, and, in addition, each subcontractor must complete, sign, and submit to the successful bidder the Subcontractor Apprenticeship Certification Form prior to the commencement of any work on the project pursuant to this solicitation.

Specific information about apprentice occupations and apprenticeship requirements is available on the Rhode Island Department of Labor and Training website at [www.dlt.ri.gov/apprenticeship](http://www.dlt.ri.gov/apprenticeship).

### **Project Labor Agreement**

The Department of Administration has negotiated a project labor agreement with the Rhode Island Building and Construction Trades Council and its affiliated local unions that will govern certain terms and conditions of employment for workers of the

successful bidder and any subcontractors performing construction work and services on this Project. The terms and conditions of the project labor agreement supersede any other terms and conditions of any collective bargaining agreements or other agreements covering such workers. The successful bidder will be required to enter into and comply, and all subcontractors performing services on this Project will be required to comply, with the terms and conditions of the project labor agreement. A copy of the project labor agreement will be included in this solicitation as an addendum.

### **Occupational Safety**

The successful bidder must ensure that all employees at the Project site possess a card issued by the United States Department of Labor certifying successful completion of an OSHA ten (10) hour construction safety program.

### **Hazardous Substances**

The successful bidder must submit a chemical identification list to the Rhode Island Department of Labor and Training upon receipt of a Purchase Order from the Division of Purchases prior to performance of the contract awarded pursuant to this solicitation and make available to all employees a list of any hazardous substances that may present a risk of exposure.

### **Contractors Registration**

The bidder must have and maintain a valid certificate of registration issued by the Contractors' Registration Board throughout the term of the contract awarded pursuant to this solicitation and ensure that its subcontractors, unless exempt from registration, also obtain and maintain valid certificates of registration.

### **Licenses**

The successful bidder and anyone performing any services on the contract awarded pursuant to this solicitation must possess all of the licenses required by any federal, state, or local law to perform such services.

### **Insurance**

The successful bidder must submit a copy of an endorsement and a certificate of insurance that references the solicitation number and names the State of Rhode Island as "certificate holder" and as "additional insured" upon the issuance of the tentative letter of award, on an annual basis during the term of the contract awarded pursuant to this solicitation, and from time to time upon request. The certificate of insurance must state that 30 days' advance notice of cancellation, nonrenewal, or material change in coverage (referencing the solicitation number) will be sent to: Rhode Island Department of Administration, Division of Purchases, One Capitol Hill, Providence, Rhode Island 02908-5855, fax # 401-574-8387, and provide evidence of the following specific types and amounts of insurance:

<u>Type of Insurance</u>	<u>Amount of Coverage</u>
Commercial <i>Project Specific</i> General Liability	\$2 Million each occurrence (inclusive of both bodily injury and property damage)
	\$2 Million products and completed operations aggregate
	\$6 Million general aggregate

*Commercial Project Specific General Liability coverage, on an occurrence basis, shall include:*

- Independent contractors
- Contractual (including construction "hold harmless" and other types of  
contracts or agreements in effect for insured operations)
- Products and completed operations (continuing for 8 years following  
final completion of the Project)
- Personal injury (with employee exclusion deleted)
- Personal and advertising liability
- Demolition and excavation (including exposures directly and incidentally  
related to moving a structure and damage to the structure)

#### Automobile Liability

Combined Single Limit	\$1 Million each occurrence
Bodily injury, property damage, including nonowned and/or hired vehicles and equipment	

#### Workers Compensation

Coverage B	\$100,000
Contractor's Pollution Liability, claims made basis, retroactive from inception, maintained 10 years	\$1 Million or 5% of contract amount, whichever is greater, each occurrence (inclusive of both bodily injury and property damage)
	\$1 Million or 5% of contract amount whichever is greater, annual aggregate

Builder's Risk	Contract amount
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The *commercial project specific general liability* coverage may be comprised of both commercial general liability insurance and umbrella liability insurance. In the event that the bidder maintains an umbrella liability insurance policy to meet the required limits, the umbrella coverage amount must begin where the commercial general liability coverage ends, and the umbrella liability policy must conform to the form of the primary policy.

The pollution liability insurance must cover the liability of the construction manager and all subcontractors for bodily injury and property damage resulting from sudden accidental and/or gradual pollution and related cleanup costs incurred by the construction manager and subcontractors arising out of the work to be performed under the contract.

All insurance required by this solicitation, whether through a policy or an endorsement, shall include: (i) a waiver of subrogation, waiving any right the insurance company may have to recover against the State of Rhode Island; and (ii) a provision that the bidder's insurance coverage shall be primary in relation to any insurance, self-insurance, or self-retention maintained by the State of Rhode Island, and any insurance, self-insurance, or self-retention maintained by the State of Rhode Island shall be in excess of the bidder's insurance.

*The Owner reserves the right to accept alternate forms and plans of insurance and/or to require additional or more extensive coverage.*

### **Minority Business Enterprises**

The successful bidder must recruit and engage minority/women business enterprises certified by the Division of Purchases, Minority Business Compliance Office ("MBEs") to perform at least 10% of the dollar value of the contract awarded pursuant to this solicitation.

The successful bidder must submit a plan to meet this requirement for approval by the Division of Purchases, Minority Business Enterprise Compliance Office within the 21-day period following the tentative letter of award, identifying all MBEs, and must also demonstrate its good faith best efforts to meet these MBE goals. Information about this requirement and a directory of MBEs certified in Rhode Island is available at [www.mbe.ri.gov](http://www.mbe.ri.gov) or (401) 574-8670.

### **Equal Opportunity**

The successful bidder must demonstrate a commitment to equal opportunity and submit an affirmative action plan for review by the Rhode Island Department of Administration State Equal Opportunity Office within the 21-day period following the tentative letter of award. Information about this equal opportunity requirement is available at [www.diversity.ri.gov/eo/eoophagehome.htm](http://www.diversity.ri.gov/eo/eoophagehome.htm) or (401) 222- 3090.

### **Drug-Free Workplace**

The successful bidder shall comply, and require that its employees and all subcontractors comply, with the State of Rhode Island Drug Free Workplace policy and provide a certificate of compliance within the 21-day period following the tentative letter of award.

### **Foreign Corporations**

No foreign corporation or limited liability company may transact business in the State of Rhode Island until it shall have obtained a Certificate of Authority from the Rhode Island Secretary of State, and no foreign limited partnership may transact business in the State of Rhode Island until it shall have obtained a Certificate of Registration from the Rhode Island Secretary of State. The successful bidder, if a corporation or limited liability company, will be required to provide a current Good Standing Certificate, and if a limited partnership, will be required to provide a current Letter of Legal Existence, issued by the Rhode Island Secretary of State within the 21-day period following the tentative letter of award.

### **Sprinkler Impairment**

The successful bidder must comply with the requirements of the State of Rhode Island's insurance carrier for sprinkler impairment and hot work, accessible at the Division of Purchases website at [www.purchasing.ri.gov](http://www.purchasing.ri.gov).

### **Criminal Background Check**

The successful bidder may be required to provide a Bureau of Criminal Identification third-party release for a criminal records request to the Rhode Island Department of Attorney General (for each individual who will be performing services under the contract awarded pursuant to this solicitation) within the 21-day period following the tentative letter of award.

### **Campaign Finance**

The successful bidder who has contributed, within the 24 months preceding the contract award, an aggregate amount of more than \$250.00 within a calendar year to any Rhode Island general officer, candidate for general office, any member of the general assembly, or any Rhode Island political party, must file a "Vendor Affidavit" with the State of Rhode Island Board of Elections. Information about "Vendor Affidavits" and electronic filing is available at [www.elections.ri.gov](http://www.elections.ri.gov) or Board of Elections, Campaign Finance, (401) 222-2056.

### **Binding Contract**

The form of agreement the successful bidder will be required to execute is included in the solicitation. A binding contract between the Owner and the successful bidder will be

formed by the issuance of a Purchase Order from the Division of Purchases, *and only by the issuance of a Purchase Order, and only to the extent of available funds.* The binding contract will incorporate and be subject to the terms and conditions of the solicitation, including the Request for Proposal, the Instructions to Bidders, the Bid Preparation Checklist, the Cost Proposal Form, the RIVIP Bidder Certification Cover Form, AIA A133 - 2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor, as modified by the Owner, AIA A201 – 2007 General Conditions of the Contract for Construction, as modified by the Owner, and also the Purchase Order. The successful bidder will be authorized to commence work only upon the issuance of the Purchase Order and, in addition, an authorization from the User Agency.

### **Compliance with Terms of Contract**

Failure of the successful bidder to comply with the terms and conditions of any contract awarded pursuant to this solicitation may result in nonpayment, suspension or termination of the contract, suspension or debarment of the bidder, or any other necessary or appropriate remedy.

## II. DESCRIPTION OF THE PROJECT

The Rhode Island Department of Human Services ("DHS") operates the Rhode Island Veterans Home on a 110-acre complex on Mount Hope Bay, in Bristol, Rhode Island. The Veterans Home provides quality nursing and residential care to United States veterans in Rhode Island and their families. The Owner, on behalf of DHS, intends to modernize the long-term care facilities by design and construction of a new state-of-the-art health care facility and renovation of several existing buildings (the "Project"). The Owner has determined, in accordance with the provisions of R.I. Gen. Laws § 37-2-27.1, that it will utilize the construction manager at risk method of construction contracting for this Project.

The Owner has retained the firm of Brewster Thornton Group Architects LLP (the "Design Agent") to provide architectural, engineering, and design services for the Project pursuant to Solicitation No. 7484370. The Design Agent's team includes architecture, mechanical, electrical, plumbing, and structural engineering, commissioning agent, civil engineering, and landscape architecture.

The Owner has also retained the services of Peregrine Group, LLC (the "Owner's Program Manager"), to represent it as owner's program manager throughout the design, construction, and close-out phases of this Project pursuant to Solicitation No. 7479367.

The Project team for this Project will consist of a representative from each of the Owner, DHS, the Design Agent, the Owner's Program Manager, and the construction manager at risk. Project design was initiated in the fall of 2013, and the design development phase has been completed. These plans are available as part of this solicitation. It is anticipated that construction will begin in 2015 and continue for 30 to 36 months, including preconstruction, with occupancy anticipated during 2017/2018.

The design of the Project will follow the 2011 Department of Veterans Affairs Office of Construction and Facilities Management guide for Community Living Centers. These guidelines focus on a resident-centered design that uses a community concept to create a homelike living environment. The design will also conform to the requirements of the State of Rhode Island International Green Construction Code, as well as all other state life safety and building codes.

The new residential facility will comprise approximately 45 acres of site work and approximately 260,000 square feet of new building construction, including six single-story "Neighborhood" buildings located around a two-story "Commons" building that will include administrative and operations space for staff and amenity spaces for residents.

The Project scope will also include demolition of approximately 180,000 square feet of the existing 200,000 square foot facility and renovation of the remaining 20,000 square feet.

Construction-related activities will be phased in over time and include, without limitation:

- site improvements, including excavation, grading, paving, landscaping, and amenities
- extensive utility systems upgrades, including removal, abandonment, and replacement of upgrades of all major utility systems from the perimeter of the property and as distributed throughout the property
- parking, vehicular, and pedestrian circulation
- new building construction, including construction of the integrated "Neighborhood" and "Commons" and maintenance buildings
- renovation of portions of the existing facility
- environmental abatement and demolition activities in the existing facility;
- preservation and relocation of historic structures, including the historic water tower and garage buildings; and
- procurement of furniture, fixtures, and equipment

Construction-related activities are further defined in the design development documents included with this solicitation and will be developed further in the plans and specifications.

The successful bidder will be expected to carry out the requirements of this Project while ensuring the uninterrupted operation of the current residential facility, the provision of services to veterans and their families, and the health, safety, and welfare of the residents, staff, and members of the public.

The successful bidder will be responsible to ensure that the Project will be completed on schedule and within the estimated construction budget.

### III. SCOPE OF SERVICES

It is anticipated that the construction manager at risk ("CMAR") will be an integral partner in the conclusion of the design process and throughout the construction and delivery of all of the components of the Project as outlined in the Description. The CMAR shall administer all construction activities and provide management direction to CMAR staff to ensure effective communication and coordination with the Owner. The CMAR shall develop, implement, and manage plans that define controls for all aspects of the Project. The CMAR shall manage the execution of the Project in order to achieve timely and cost-effective completion of all activities while maintaining high construction quality. These procedures will be coordinated with the completion of contracts and approvals negotiated simultaneously with the various members of the Project Team and the Project schedule and budget.

CMAR activities will include, but not be limited to:

a) Preconstruction

- Attendance at recurring meetings and provision of meeting minutes and correspondence if CMAR is leading the meeting
- Recurring reporting to Project Team
- If not complete, support ongoing negotiation of the Project Labor Agreement
- Design Review Coordination
  - Evaluation of current Project documents (Design Development) and ongoing design documents through completion of 100% Construction Documents
  - Provide opinion on constructability, value engineering, schedule and design objectives for the Project
  - Review and provide opinion on phasing and early release options
- Project Schedule
  - Generate, review, and revise a draft Project construction schedule
  - Maintain approved Project construction schedule
- Project Cost Estimate Review
  - Review and provide opinion on cost estimates prepared by the Design Agent and the Owner's Program Manager to date – the Design Agent and the Owner's Program Manager will be preparing two cost estimates for the Design Development plans which will be reconciled. It is anticipated that the CMAR will review these estimates and provide comment and input on revisions.
  - Additional cost estimating to support ongoing design and preconstruction
  - It is not anticipated that the CMAR will conduct a separate cost estimate for the Project

b) Procurement/Bidding

- In coordination with the Owner and the Division of Purchases, establish a protocol and plan to meet the requirements set forth in R. I. Gen. Laws § 37-2-27.4
- Establish required technology interface (website, ftp site or other) for purposes of providing transparency in bidding and procurement process to meet the requirements set forth in R. I. Gen. Laws § 37-2-27.4
- Prequalification
- Bidding
- Approval and selection of subcontractors with the Owner and the User Agency
- Scope and contract negotiation with subcontractors
- Execution of subcontracts

c) Construction

- Early release construction as approved by Owner
- Mobilization activities
- Oversight and management of day-to-day construction activities
- Coordination with on-site operations personnel regarding day-to-day construction activities as it relates ongoing operations and resident and staff safety and welfare
- Recurring meetings with the Owner, Design Agent, and CMAR to review progress of the Project, schedule, budget, and issues. CMAR shall provide meeting minutes and distribution
- Issuance of Requests for Information, submittals, and other correspondence in accordance with industry standard protocol to resolve questions and coordination issues in the field
- Issuance and coordination of monthly requisitions for payment for overall construction Project including all subcontractors. Requisitions for payment shall be made pursuant to AIA 702-1992 and AIA 703-1992, with supporting documentation required by the Owner
- Systems start-up and punchlist with the Design Agent (commissioning agent)
- Final cleaning
- Recurring reporting for Owner, local, state, and federal requirements, including audits and legislative requirements which may include, but not be limited to:
  - Progress Reports
  - Forecast of construction cost
  - Requests for Information/Submittal Logs
  - Potential Change Order/Change Order Logs
  - Analysis of construction critical path(s) and secondary critical paths
  - Update master Project construction schedule
  - Analysis of time lost/gained

- Update master Project construction budgets
- Budget modifications
- Project final construction cost
- Summary of significant changes in the anticipated costs
- Action list - update of last action list
- Construction cash flow summary

d) Close-Out

- Obtaining appropriate federal, state, local, and Owner approvals
- Generation of punchlist for all subcontractors
- Addressing and satisfying all items on Project punchlist(s), including Owner and CMAR
- Removal of all temporary site facilities
- Provision of as-builts
- Provision of Owner manuals
- Provision of operations and maintenance documentation
- Provision of product warranties
- Provision and overview of spares and attic stock
- Processing of final requisitions including all required supporting documentation including warranty, lien releases, and other required documents

The Project scope is further defined in the Contract Documents.

## IV. TIMETABLE AND DEADLINES

This section of the solicitation contains the schedule governing the issuance, evaluation, and award of the contract. The Division of Purchases reserves the right to modify the schedule in the best interest of the State of Rhode Island.

<b>ACTION</b>	<b>ANTICIPATED SCHEDULE</b>
Issuance of Solicitation	October 7, 2014
Site Visit (mandatory)	October 14, 2014 at 10:00 a.m.
Emailed Questions by Bidders Due	October 17, 2014 by 4:00 p.m.
Responses to Questions	October 20, 2014
Bid Proposal Submission Deadline	October 27, 2014 at 10:30 a.m.
Oral Presentations (as necessary)	October 31, 2014
Tentative Award of Contract	November 3, 2014

## V. TECHNICAL PROPOSAL

### A. *Work Plan*

Describe the bidder's understanding of the requirements of the Owner and User Agency pursuant to the solicitation, including the intended results.

Address each of the major components described under **Scope of Services**, as well as any technical issues that will or may arise in performing the requested services.

Include a specific plan detailing the manner in which the bidder will develop, provide, and monitor the requested services.

Review and provide substantive comments on the Design Development Plans and make recommendations for improvements.

### B. *Project Approach*

In narrative form, the bidder shall provide a project approach, including:

- staffing
- early release work
- phasing (preconstruction, construction, close-out)
- integration of construction and day-to-day operational activities

Additionally, the bidder shall include methods of cost control and value engineering, BIM and other technology approaches to ensure Project success.

### C. *Procurement Approach*

In narrative form, the bidder shall provide a procurement approach in compliance with applicable Rhode Island law:

- prequalification of subcontractors
- bidding of subcontracts (in accordance with the provisions of R. I. Gen. Laws § 37-2-27.4)
- preparation of abstracts
- presentation and decision-making with project partners
- addressing bid challenges

## VI. COST PROPOSAL

Provide a detailed cost proposal for fees to be charged for the services specified in this solicitation. Include a budget and an explanation of the basis and rationale of the proposed fee structure.

The cost proposal shall include an itemization of the following fees:

- *Preconstruction*: Fixed fee for preconstruction services, including without limitation, attendance at team meetings, review of drawings and team provided cost estimates, and providing opinions on cost, constructability, and schedule, with a detailed breakdown for the project executive, project manager, estimator, scheduler, and support staff, assuming a 6-month schedule
- *Construction services*: Fixed fee for construction services, with profit and overhead separately itemized, subject to finalization in the negotiation and execution of the GMP Amendment; and
- *General Conditions/General Requirements*: Estimated cost of the general conditions and general requirements, with a detailed breakdown based on a 30-month schedule, subject to finalization in the negotiation and execution of the GMP Amendment

Bidders shall use the Preconstruction Fee Schedule (included with this solicitation) as an example of the detail required to support the preconstruction fee and modify it as necessary.

The Owner anticipates that funds available for the total cost of the Project, inclusive of all Project components, such as architectural and engineering services and other soft costs, construction, and furniture, fixtures, and equipment, will be approximately \$94 Million. Of that total cost, the Owner estimates that *hard costs* for the Project, exclusive of fee, general conditions, preconstruction, and contingency, will be approximately \$64 Million. Bidders should base their calculations on the anticipated hard costs for this Project.

Bidders shall use the General Conditions/General Requirements Schedule (included with this solicitation) as an example of the detail required to support the calculation of the estimated cost and modify it as necessary.

The successful bidder will be expected to provide a Guaranteed Maximum Price for review and approval prior to the start of construction.

## **VII. EVALUATION AND SELECTION**

### **Evaluation Team**

The Division of Purchases will establish a Technical Review Committee, comprised of five (5) members, with one member from the Department of Administration Division of Legal Services, one member from the Department of Administration with experience in the construction of capital projects, one member from the Division of Purchases, and two members from the Department of Human Services. The Technical Review Committee, with the assistance of the Owner's Program Manager, will review proposals and make recommendations for award of the contract pursuant to this solicitation.

### **Evaluation Process**

The Technical Review Committee will conduct a comprehensive and impartial evaluation of all bid proposals based on the bidder's responses to the questions and requirements in the solicitation and assign a point value to the different components. The Technical Proposal is worth 60 points. The Technical Review Committee will evaluate each bid proposal to determine whether it is complete and comprehensive. Bid proposals that are incomplete or nonresponsive or otherwise fail to comply with the terms and conditions of this solicitation may be rejected.

The primary criteria are:

- commitment to service the State of Rhode Island and its governmental subdivisions through high standards of performance
- flexibility and innovation in addressing the needs of the State of Rhode Island
- demonstrated ability to perform the requirements specified in the solicitation

The Technical Review Committee will provide a recommendation to the Division of Purchases. The Division of Purchases reserves the right to select the bidder or bidders that it deems to be in the best interest of the State of Rhode Island to perform the services requested in the solicitation or to reject all bid proposals.

The Technical Proposal will be evaluated and scored based upon the following point system:

EVALUATION CRITERIA	MAXIMUM POINTS
<b>TECHNICAL PROPOSAL</b>	
Work plan	20
Project approach	20
Procurement approach	20
<b>Maximum Total Technical Points</b>	<b>60</b>
<b>COST PROPOSAL</b>	
Preconstruction fee	5
Construction services fee	20
General Conditions/General Requirements fee	15
<b>Maximum Total Cost Points</b>	<b>40</b>
<b>MAXIMUM TOTAL POINTS</b>	<b>100</b>

The Technical Review Committee may consider the bidders' presentation during the interview process pursuant to the "Prequalification – Construction Management at Risk (PCM), Phase I – Rhode Island Veterans Home Facilities and Renovations – Bristol, RI" Solicitation in its evaluation of the bidders.

The bidder's Technical Proposal must receive a minimum of 45 points out of a maximum of 60 points to be eligible for further consideration. All Technical Proposals that receive a score of at least 45 points will be evaluated on the basis of cost. The Cost Proposal is worth a maximum of 40 points.

The bidder with the lowest fee proposal for the preconstruction fee will receive the full 5 cost points; the bidder with the lowest fee proposal for the construction services fee will receive the full 20 cost points; the bidder with the lowest fee proposal for the general conditions/general requirements fee will receive the full 15 cost points. The other bidders in each category will receive a number of points prorated for their total fee proposal as it reflects a proportion of the lowest proposal. A fee proposal of twice the amount of the lowest fee proposal in preconstruction fee, for example, would receive \_\_\_\_ cost points. Cost points are determined by the following formula:  $x/n (y) = \text{cost points awarded}$ ; where "x" equals the lowest bid, "n" equals any bid under consideration, and "y" equals \_\_\_\_ cost points.



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration  
DIVISION OF PURCHASES  
One Capitol Hill  
Providence, RI 02908-5855

Tel: (401) 574-8100  
Fax: (401) 574-8387  
Website: [www.purchasing.ri.gov](http://www.purchasing.ri.gov)

**SOLICITATION # 7548998**

**TITLE: Pre-Qualification – Construction Management at Risk (PCM), Phase 1-Rhode Island Veterans Home Facilities and Renovations – Bristol, RI**

**CONSTRUCTION MANAGERS LISTED BELOW HAVE BEEN EVALUATED AND  
DETERMINED TO BE PRE-QUALIFIED TO BID ON THE NEXT PHASE OF THE ABOVE  
LISTED SOLICITATION**

COMPANY NAME	CONTACT PERSON	ADDRESS	PHONE
Agostini Construction Co., Inc.	Stephen Ahern <a href="mailto:steveah@baconconstruction.com">steveah@baconconstruction.com</a>	243 Narragansett Park Dr. East providence, RI 02916	PH: 401-435-4848
Shawmut Design and Construction	Ron Simoneau <a href="mailto:rsimoneau@shawmut.com">rsimoneau@shawmut.com</a>	3 Davol Square Providence, RI 02903	PH: 401-752-6510
Dimeo Construction Company	Mike Fuchs <a href="mailto:mfuchs@dimeo.com">mfuchs@dimeo.com</a>	75 Chapman Street Providence, RI 02905	PH: 401-781-9800
Gilbane Building Company	Michael Busam <a href="mailto:mbusam@gilbaneco.com">mbusam@gilbaneco.com</a>	7 Jackson Walkway Providence, RI 02903	PH: 401-456-5672

# DRAFT AIA® Document A133™ - 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

**AGREEMENT** made as of the date of issuance of the Awarding Authority's Purchase Order  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status and address)

«The State of Rhode Island, acting by and through the Department of Administration  
Division of Capital Projects and Property Management, on behalf of the User Agency  
One Capitol Hill  
Providence, Rhode Island 02908-5855 »« »  
«(401) 222-8207 (telephone)  
www.doa.ri.gov

»

and the Construction Manager at Risk (the "Construction Manager"):  
(Name, legal status and address)

« »« »  
« »

for the following Project:  
(Name and address or location)

«Veterans Home Facilities and Renovations Project»  
« Bristol, Rhode Island »

on behalf of the User Agency:

The Rhode Island Department of Human Services  
Louis Pasteur Building  
57 Howard Avenue  
Cranston, Rhode Island 02920

pursuant to a Solicitation issued by the Awarding Authority:

The State of Rhode Island, acting by and through the Department of Administration  
Division of Purchases, on behalf of the User Agency  
One Capitol Hill, Second Floor  
Providence, Rhode Island 02908-5855 »« »  
«(401) 574-8100 (telephone)  
(401) 574-8387 (facsimile)  
www.purchasing.ri.gov

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

The Design Agent:  
(Name, legal status and address)

«Brewster Thornton Group Design Agents, LLC  
150 Chestnut Street  
Providence, Rhode Island 02903  
(401) 861-1600 (telephone)  
(401) 861-5588 (facsimile)  
www.brewsterthornton.com » « »  
« »

The Owner's Designated Representative:  
(Name, address and other information)

«Namvar Moghadam, Associate Director »  
« The State of Rhode Island Department of Administration »  
« Division of Capital Projects and Property Management »  
« One Capitol Hill »  
« Providence, Rhode Island 02908-5855 »  
« (401) 222-8207 »  
[Namvar.Moghadam@doa.ri.gov](mailto:Namvar.Moghadam@doa.ri.gov)

The Owner's Program Manager:

Peregrine Group, LLC  
Samuel J. Bradner, Patner  
Rumford Center, Building No. 3  
20 Newman Avenue – Suite 1005  
Rumford, Rhode Island 02916  
(401) 270-0600 (telephone)  
(401) 270-0707 (facsimile)  
[sbradner@peregrinegrp.com](mailto:sbradner@peregrinegrp.com)

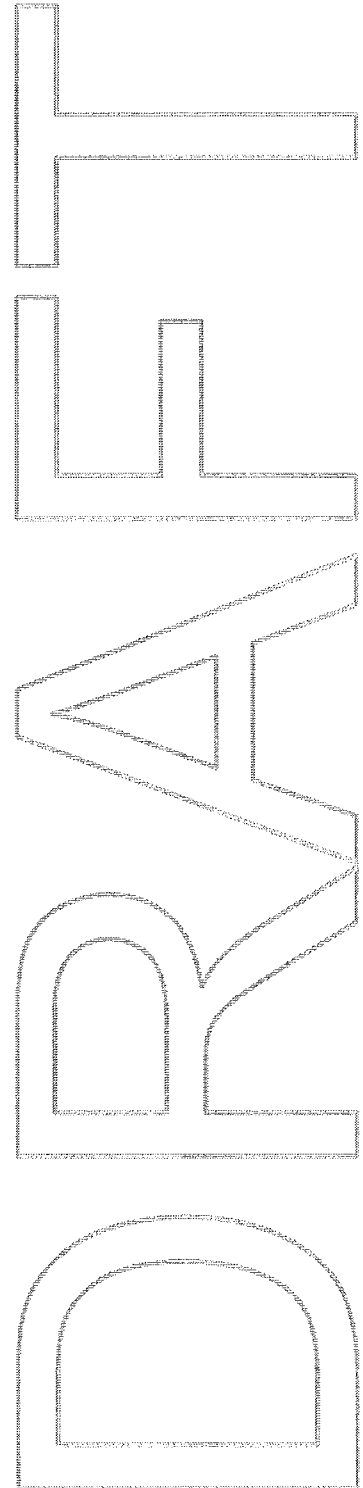
The Construction Manager's Designated Representative:  
(Name, address and other information)

« »  
« »  
« »  
« »  
« »  
« »

The Design Agent's Designated Representative:  
(Name, address and other information)

« Barbara J. Thornton, Partner »  
« Brewster Thornton Group Architects, LLP »  
« 150 Chestnut Street »  
« Providence, Rhode Island 02903 »  
« (401) 861-1600 »  
« [Barbara@brewsterthornton.com](mailto:Barbara@brewsterthornton.com) »

The Owner and Construction Manager agree as follows.



## TABLE OF ARTICLES

1	GENERAL PROVISIONS
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## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General Conditions, Supplementary, if any, and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed-Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Design Agent and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner and Owner's Program Manager to cooperate with the Design Agent and exercise the Construction Manager's best skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Construction Manager shall complete the Work in accordance with the highest standards applicable to a full competent first-class construction manager for this type of Project. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, in the form included in the Solicitation, and as modified by the Owner thereafter, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, in the form included in the Solicitation, and as modified by the Owner thereafter, which document is

incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

#### **§ 1.4 Construction Manager at Risk**

The Construction Manager under this Agreement and the Contract Documents shall be a "construction manager at risk" as defined in R. I. Gen. Laws § 37-2-7(31) and in accordance with the provisions of R. I. Gen. Laws §§ 37-2-27.1-5.

### **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Owner's Program Manager and Design Agent, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager submitted a Bid Proposal to the Owner dated [REDACTED], 2014 (the "Bid Proposal"), wherein the Construction Manager proposed the approach it would pursue to perform the services required of it under the Contract. Where not inconsistent with the Contract, and not in limitation of its obligations under the Contract Documents, the Construction Manager shall utilize both the approach set forth in the Bid Proposal and the approach set forth in this Agreement in performing the obligations of the Contractor. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager shall not change its Designated Representative without the prior written consent of the Owner, the Owner's Program Manager, and the User Agency.

#### **§ 2.1 Preconstruction Phase**

**§ 2.1.1** The Construction Manager shall provide a preliminary written evaluation of the Owner's program, design, schedule and construction budget requirements, each in terms of the other.

#### **§ 2.1.2 Consultation**

The Construction Manager shall attend and schedule and conduct meetings with the Owner's Program Manager, Design Agent, and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Design Agent on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner, Owner's Program Manager, and Design Agent on constructability; availability of materials and labor; time requirements for procurement, installation, and construction; and factors related to construction cost, including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Owner's Program Manager's and Design Agent's review and the Owner's acceptance. The Construction Manager shall obtain the Owner's Program Manager's and Design Agent's approval for the portion of the Project schedule relating to the performance of the Design Agent's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Design Agent's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

#### **§ 2.1.4 Phased Construction**

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

#### **§ 2.1.5 Preliminary Cost Estimates**

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Design Agent, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques for the Owner's Program Manager's and Design Agent's

review and Owner's approval. If the Owner's Program Manager, Design Agent or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Design Agent progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Owner's Program Manager, Construction Manager, and Design Agent, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Owner's Program Manager and Design Agent's review and the Owner's approval. The Construction Manager shall inform the Owner, Owner's Program Manager, and Design Agent when estimates of the Cost of the Work exceed the latest approved Project budget and make value engineering and other recommendations for corrective action.

#### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project, taking into account the Owner's program and employment objectives (including, without limitation, equal employment opportunities and minority business enterprise and veteran-owned business requirements), and shall establish a protocol and plan to meet the requirements set forth in R. I. Gen. Laws § 37-2-27.4. The Construction Manager shall furnish to the Owner and Owner's Program Manager (for approval) and the Design Agent (for information) a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The receipt of such list shall not require the Owner or the Design Agent to investigate the qualifications of proposed subcontractors, which shall be the responsibility of the Construction Manager, nor shall it waive the right of the Owner later to object to or reject any proposed subcontractor for any reason. . All bid proposals from, and subcontracts with, Subcontractors pursuant to this Section 2.3.2.1 shall be public records pursuant to the Rhode Island "Access to Public Records Act," R.I. Gen. Laws §§ 38-2-1 et seq., and R. I. Gen. Laws § 37-2-27.5, "Procurement of construction manager at-risk services – Public Records."

**§ 2.1.7** The Construction Manager shall prepare, for the Owner's Program Manager's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise all due care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Owner's Program Manager, Design Agent and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Design Agent may require. Notwithstanding the foregoing, it shall be the Construction Manager's responsibility to ensure that any services provided by the Construction Manager pursuant to this Contract shall expressly be provided in accordance with the provisions of § 2.1.9, and further, the Construction Manager shall be responsible to the Owner for its acts and omissions, as well as the acts and omission of its subcontractors and consultants, and their agents and employees, and all persons and other legal entities providing services or performing work on the Project under contract with the Construction Manager.

#### **§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents. The Construction Manager shall be responsible for the preparation and

administration of a minority business enterprise plan and equal opportunity plan acceptable to the Minority Business Enterprise Compliance Office and incorporated into this Contract.

**§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Owner's Program Manager, Design Agent, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Design Agent, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee; and
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price, which date shall not be less than 60 days after its receipt by the Owner.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Owner's Program Manager to review the Guaranteed Maximum Price proposal. In the event that the Owner and Owner's Program Manager discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 2.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Design Agent. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

**§ 2.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

**§ 2.2.8** The Owner shall authorize the Design Agent to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Design Agent of any

inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications within 24 hours of the determination of any inconsistency..

§ 2.2.9 The Owner is exempt from federal excise taxes and state and municipal sales and use taxes. The bidder shall not include such taxes in any prices in the Guaranteed Maximum Price proposal.

§ 2.2.10 The successful bidder awarded a contract pursuant to this solicitation shall be liable for and pay the State, as liquidated damages and not as a penalty, the following amount for each calendar day of delay beyond the date for substantial completion, as determined in the sole discretion of the State: \$ \_\_\_\_\_.

### § 2.3 Construction Phase

#### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and the Owner's issuance of a Purchase Order to Proceed.

#### § 2.3.2 Administration

§ 2.3.2.1 The Work shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall not use its own employees to perform any Work other than the General Conditions unless authorized in writing by the Owner. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work in accordance with the provisions of R. I. Gen. Laws § 37-2-27.4 and shall deliver such bids to the Owner's Program Manager and the Design Agent. Except as otherwise approved by the Owner, a minimum of three bids shall be solicited for each trade or other portion of the Work, including any portion of the Work that the Construction Manager may self-perform (with the Owner's prior written approval). Subcontractor solicitations shall be prepared by the Construction Manager, including without limitation, trade-specific scope definitions and schedule requirements. The Construction Manager shall be responsible for reviewing all Construction Documents included in such solicitations, so as to ensure that the Subcontractor solicitations, taken together, include all necessary construction work for the Project. The scopes of work included in the solicitations shall include all work reasonably inferable to complete the Project. The buy-out (procurement of Subcontractors and suppliers to perform or supply all portions of the Work) will be conducted on an "open-book" basis. The Owner's Program Manager and the Construction Manager shall jointly review all bids and proposals submitted. The Construction Manager shall analyze and level the bids, and prepare a spreadsheet and recommendation for each trade. The Owner's Program Manager may participate in all negotiations and attend all pre-bid conferences, buy-out meetings and other meetings between the Construction Manager and prospective Subcontractors or suppliers, and the Construction Manager shall notify the Owner's Program Manager in writing reasonably in advance of each meeting or telephone negotiation with a prospective Subcontractor or supplier. Copies of all bid proposals or other documents received by the Construction Manager from any prospective Subcontractor or supplier, and all documents delivered by the Construction Manager to any prospective Subcontractor or supplier, shall be delivered to the Owner's Program Manager within 48 hours of receipt. The Owner shall then determine, with the advice of the Construction Manager, the Owner's Program Manager, and the Design Agent which bid proposals will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid proposal that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid proposal of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the

Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

**§ 2.3.2.4** If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

**§ 2.3.2.5** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Owner’s Program Manager, and Design Agent.

**§ 2.3.2.6** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner, the Owner’s Program Manager, and Design Agent a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

**§ 2.3.2.7** The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as required by the Owner, the Construction Manager shall submit written progress reports to the Owner, Owner’s Program Manager, and Design Agent, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Design Agent, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

**§ 2.3.2.8** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner, Owner’s Program Manager, and Design Agent and shall provide this information in its monthly reports to the Owner, Owner’s Program Manager, and Design Agent, in accordance with Section 2.3.2.7 above.

## **§ 2.4 Professional Services**

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

## **§ 2.5 Hazardous Materials**

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

## **§ 2.6 Warranties**

**§ 2.6.1** The Construction Manager hereby warrants that the Work shall be free from defects and deficiencies (including, but not limited to, failure of the Work to conform to, and that the Work, shall conform to the Drawings and Specifications as to kind, quality, function of equipment and characteristics of material and workmanship), which defects and deficiencies (other than latent defects and deficiencies) develop within: (i) a period of one year from the date when all of the Work has been Substantially Completed in accordance with the requirements of the Contract Documents, or (ii) such longer period for any component of the Work which may be specified in the Contract Documents, or (iii) any warranty period which may be longer than the periods specified in (i) and (ii) above as provided in any specific warranty for such component. Nothing set forth in this Agreement shall restrict in any way or operate as any limitation on the right of the Owner or User Agency to seek damages or other remedies against the Construction Manager or any other person under any legal or equitable theory with respect to any defects and deficiencies which are latent in nature and not readily ascertainable in the ordinary course of an observation. The Construction Manager shall not be responsible for the performance of the guarantee or warranty provisions of any third party (except Subcontractors retained by Construction Manager) covered by this Section 2.6. The term “defects and deficiencies” shall include, but not be limited to, any defects, faults, damages, or imperfections in such work, material, or equipment in the Project or Project site (excluding matters that are the sole responsibility of the Design Agent), or any parts thereof so furnished by, through or under the Construction Manager or any Subcontractor which appear prior to the expiration of the applicable warranty period. Reference is made to applicable sections of the Specifications for specific performance and time warranties as may be required therein over and above the one-year general warranty specified herein. Prior to Final Payment and before issuance of the final certificate therefor, the Construction Manager shall submit to the Design Agent signed written warranties, in

the form provided by the Design Agent, including the exact language of the individual guarantee provisions of the technical sections of the specifications, but such written warranties shall not limit or diminish the Construction Manager's obligations under the warranties set forth in this Section 2.6 or elsewhere in the Contract. The warranties provided for in this Section 2.6 and elsewhere in this Agreement shall be assignable by the Owner without obtaining the Construction Manager's consent to such assignment; provided, however, that no assignment shall be necessary to cause any warranty or guarantee to inure to the benefit of and be enforceable directly by the User Agency and the Owner's and User Agency's respective successors and assigns. The commencement of these warranty periods shall not be advanced or otherwise affected by the fact that the Construction Manager or the Owner use portions of the Work, including, but not limited to, the electrical, mechanical, and heating and ventilating systems, (i) prior to when such warranty period would otherwise commence (except where sustained or continued use by the User Agency cause a Manufacturer's warranty to begin running by its terms) or (ii) that are part of a larger integrated system, in which event such warranty period shall not commence running until the User Agency commences use of the entire integrated system. All warranties provided for in the Contract Documents may be enforced by the Owner and the User Agency and may be assigned to and enforced directly, whether or not such warranties are separately assigned, by the User Agency, the Owner, and the User Agency's and Owner's respective successors and assigns. The one year warranty period in this Section 2.6 shall not apply to: (i) furniture, office supplies, and office equipment provided under the Contract Documents, or (ii) fixtures or equipment which are covered by a manufacturer's warranty which is assigned to Owner and is for a period of at least one year.

**§ 2.6.2** The Construction Manager shall, within a reasonable time after receipt of written notice thereof, but in no event later than ten (10) days after receipt of such notice, commence to correct, repair, and make good any deficiencies and defects in the Work for which such materials, equipment, and workmanship as are warranted, and also make good any damage to other work caused by the repairing of such deficiencies and defects. None of such work performed in correcting such deficiencies and defects shall be the basis of a claim for additional compensation or damages.

**§ 2.6.3** In the case of any work performed in correcting deficiencies and defects pursuant to the warranties provided for by this Agreement or remedies otherwise available to the Owner or User Agency, the warranty periods specified by this Section 2.6 or elsewhere in the Contract Documents shall continue until the later of: (i) the date upon which the original warranty period would expire for such defective work, or (ii) 90 days after such corrective work is completed.

**§ 2.6.4** These remedies shall not deprive the Owner or User Agency of any action, right, or remedy available to it for breach of any of the provisions of the Contract Documents by the Construction Manager and the periods referred to in this Section 2.6, or such longer time as may be specified elsewhere, shall not be construed as a limitation on the time in which the Owner or User Agency may pursue such other action, right, or remedy. In addition, the Construction Manager warrants to the Owner and the User Agency that the Work will be performed in a safe and careful manner and will conform to the requirements of the Contract Documents.

**§ 2.6.5** The Construction Manager shall require each Subcontractor to execute and deliver to the Owner a warranty of the Work to be performed by such Subcontractor, in form satisfactory to Owner which shall conform to the requirements of this Section 2.6 and shall otherwise be in form and substance satisfactory to the Owner. Such warranty by a Subcontractor shall be enforceable directly by the Owner and User Agency against each such Subcontractor and shall be in addition to any warranty provided by the Construction Manager herein.

**§ 2.6.6** The Construction Manager shall obtain warranties with respect to all equipment and materials and personal property supplied with respect to the Work from the respective suppliers, no less favorable than the standard warranty supplied with respect to such equipment, materials, and personal property by the suppliers thereof, which warranties shall be enforceable directly by the Owner and User Agency against such suppliers and shall be in addition to any warranty provided by the Construction Manager herein or by any Subcontractor.

**§ 2.6.7** The warranties shall be executed by the respective Subcontractors not later than the date of the application for final payment to the Subcontractor with respect to the applicable Subcontract. The Construction Manager shall obtain such warranties from each Subcontractor and deliver one executed original of each to the Design Agent. The Construction Manager shall bind copies of warranties together in a single volume, grouped by trade and properly indexed. The Owner shall have no obligation to make any payment with respect to the portion of the Work provided by any Subcontractor which has not delivered the warranties required of each Subcontractor.

§ 2.6.8 Warranties applicable to permanent electrical, mechanical, heating, and ventilation systems for which the Construction Manager has elected to use on a temporary basis will not begin until the Construction Manager has completed temporary use of such systems, restored such systems to like-new condition, and turned the systems over to the Owner for permanent use or operation by the Owner, provided, however, that if the system is such that it interacts in any material degree with any other system which has not been turned over for permanent use or operation by the Owner, then such period shall begin at the time of Substantial Completion, whichever is earlier.

§ 2.6.9 The Construction Manager shall commence, diligently prosecute, and complete the Work as set forth in this Article 2 and elsewhere in this Agreement. The times stated in this Agreement for the commencement, prosecution, and completion of the Work, and the furnishing and installation of all material and equipment shall for all purposes be deemed to be of the essence of this Agreement.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Intentionally omitted.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, and (2) the Owner's other costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Owner's Program Manager, Construction Manager and Design Agent. The Owner, Owner's Program Manager, and the Design-Agent, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 Intentionally omitted.

§ 3.1.4.2 The Owner has provided a survey with existing conditions in the Design Development Plans included in the Solicitation.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, if required by the circumstances, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

#### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Design Agent does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The Owner has also designated an Owner's Program Manager. The Owner and the Owner's Program Manager shall administer the Contract.

**§ 3.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Design Agent

The Owner has retained a Design Agent to provide services, duties, and responsibilities as described in AIA Document B101™-2007, Standard Form of Agreement Between Owner and Design Agent, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Design Agent, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

**§ 4.1.1** For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

**§ 4.1.2** For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« »

**§ 4.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 4.1.4** Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

### § 4.2 Payments

**§ 4.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

**§ 4.2.2** Payments are due and payable within 30 days of presentation of the Construction Manager's invoice. No interest shall be due or payable on account of any payment due or unpaid except in accordance with the provisions of "Prompt Payment by Department of Administration," R.I. Gen. Laws §§ 42-11.1-1 et seq.

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

**§ 5.1** For the Construction Manager's performance of the Work as described in Section 2.3 and elsewhere in the Contract Documents, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

**§ 5.1.1** The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

« »

**§ 5.1.2** The method of adjustment of the Construction Manager's Fee for changes in the Work:

« »

**§ 5.1.3** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

« »

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ~~100~~ percent ( ~~100~~ %) of the standard rate paid at the place of the Project.

§ 5.1.5 Intentionally omitted.

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

~~«All savings inure to the benefit of the Owner. When the buy-out of all subcontracts has been substantially completed, the Guaranteed Maximum Price shall be adjusted downward by Change Order to reflect the aggregate buy-out savings.»~~

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.2.3 The Guaranteed Maximum Price shall include a not-to-exceed amount for General Conditions and General Requirements (the “General Conditions Cap”). Compensation to the Construction Manager for all items identified in the Guaranteed Maximum Price Amendment as General Conditions or General Requirements, and all other items customarily understood to be included in General Conditions or General Requirements, except for any items specifically excluded, shall not exceed the General Conditions Cap. If the actual General Conditions or General Requirements costs incurred by the Construction Manager in connection with the Project exceed the General Conditions Cap, the Construction Manager shall be responsible for paying such excess costs without reimbursement by the Owner. General Conditions and General Requirements costs shall be included in the Construction Manager’s monthly Applications for Payment based on actual costs incurred, with supporting documentation.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions. The Owner shall issue such changes in writing. The Design Agent may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior written consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of AIA Document A201–2007 and the term “costs” as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## **ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 6.1 Costs to Be Reimbursed**

**§ 6.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

**§ 6.1.2** Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### **§ 6.2 Labor Costs**

**§ 6.2.1** Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops.

**§ 6.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval, subject to the General Conditions Cap and limited to the staffing specified in the Construction Manager's Guaranteed Maximum Price proposal as accepted by the Owner.

**§ 6.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work, subject to the General Conditions Cap.

**§ 6.2.4** Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

**§ 6.2.5** Intentionally omitted.

### **§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### **§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 6.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment (to the extent not included in General Conditions/General Requirements), and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and

removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal, subject to the General Conditions Cap.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions, and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, subject to the General Conditions Cap.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, subject to the General Conditions Cap.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

**§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval.

**§ 6.6.2** Intentionally omitted.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Construction Manager is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's written consent. However, such costs of legal defenses, judgments, and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees, and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work with the Owner's prior written approval.

**§ 6.6.7** Deposits lost for causes other than the Construction Manager's or Subcontractors' negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 6.6.8** Legal, mediation, and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior written approval, which shall not be unreasonably withheld.

**§ 6.6.9** Intentionally omitted.

**§ 6.7 Other Costs and Emergencies**

**§ 6.7.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing in advance by the Owner.

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

**§ 6.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager or Subcontractor or supplier and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8, or are on account of work expressly stated to be performed at no cost to the Owner, or at the cost of the Construction Manager.

#### **§ 6.8 Costs Not To Be Reimbursed**

**§ 6.8.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase
- .9 Penalties, fines, or other costs imposed by governmental authorities in connection with or resulting from any violation of or noncompliance by the Construction Manager or any Subcontractors with applicable federal, state, or local law; and
- .10 Costs incurred by the Construction Manager after Final Completion..

#### **§ 6.9 Discounts, Rebates and Refunds**

**§ 6.9.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### **§ 6.10 Related Party Transactions**

**§ 6.10.1** For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager directly or indirectly owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### **§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors or other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

#### **§ 7.1 Progress Payments**

**§ 7.1.1** Based upon Applications for Payment submitted to the Design Agent and the Owner's Program Manager by the Construction Manager and Certificates for Payment issued by the Design Agent and approved in writing by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents, and in accordance with the provisions of "Prompt Payment by Department of Administration," R. I. Gen. Laws §§ 42-11.1-1 et seq..

**§ 7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month

**§ 7.1.3** The Owner shall make payment of the certified amount to the Construction Manager not later than the 30<sup>th</sup> working day following written approval by the Owner.

**§ 7.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Owner's Program Manager, or Design Agent to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment. Each Application for Payment shall also be accompanied, all in form and substance satisfactory to the Owner, by: (i) duly executed payment acknowledgements, lien waivers, releases, or other similar documents as may be required by the Owner, from the Construction Manager and Subcontractors, in the forms approved in writing by the Owner; (ii) applications for payment from each Subcontractor on AIA Documents G702-1992 and G703-1992; and (iii) such other documentation or information as the Owner may request.

**§ 7.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Design Agent and the Owner's Program Manager may require. This schedule, unless objected to by the Design Agent or the Owner's Program Manager, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 7.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the

percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of ~~«five»~~ percent (~~«5»~~ %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ~~«five»~~ percent (~~«5»~~ %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Design Agent has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Design Agent and the Owner's Program Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Design Agent or the Owner's Program Manager has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Design Agent or the Owner's Program Manager has made exhaustive or continuous on-site inspections; or that the Design Agent or the Owner's Program Manager has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors or representatives acting in the sole interest of the Owner.

§ 7.1.11 Notwithstanding any other provision of this Section 7.1, or any other provisions of the Contract, when the remaining unpaid balance of the Guaranteed Maximum Price (as adjusted to reflect buy-out savings), including retainage held by the Owner and excluding any remaining construction contingency, is equal to approximately \$1,000,000, as reasonably determined by the Owner, no further progress payments shall be made to the Construction Manager. Payment of such unpaid balance shall be deferred as provided in Section 7.2. Such deferral of payment to the Construction Manager shall not affect the Construction Manager's obligations to make timely payment to Subcontractors and suppliers.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when:

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Design Agent and approved in writing by the Owner's Program Manager and the Owner;
- .4 the Construction Manager has submitted to the Owner all close-out documents, including without limitation, all as-built plans, warranties, manuals, and other materials set forth in the Contract Documents;
- .5 the Construction Manager shall have delivered to the Owner a certificate certifying to the Owner that the Work has been completed to the best of the Construction Manager's knowledge: (i) in accordance with the Drawings, Specifications, and other Contract Documents; (ii) in accordance with changes thereto which have been approved by the Owner; and (iii) in compliance with applicable federal, state, and local law;
- .6 the Construction Manager shall have fully performed all of the Construction Manager's material obligations under the Contract Documents other than warranty obligations and other obligations which by their nature arise after Final Payment;
- .7 the Construction Manager has submitted its final waiver of lien and final waivers of lien from all of its Subcontractors and suppliers in a form acceptable to the Owner and has submitted a notarized affidavit stating that all monetary obligations to suppliers of material, services, labor, and all other Subcontractors have been completely fulfilled and discharged, except for disputed amount.;

The Owner's final payment to the Construction Manager shall be made no later than 30 working days after the issuance of the Design Agent's final Certificate for Payment and written approval by the Owner, and in accordance with the provisions of "Prompt Payment by Department of Administration," R. I. Gen. Laws §§ 42-11.1-1 et seq.

§ 7.2.1.1 The Owner shall have the right to deduct from any payments due to the Construction Manager the amount of any unpaid obligations owed to the State of Rhode Island by the Construction Manager, including without limitation, any and all unpaid taxes, and to pay the amount of such deductions to the Controller of the State of Rhode Island.

§ 7.2.1.2 The Owner shall have the right to deduct from any payments due to the Construction Manager the amount of any claim against the Construction Manager arising out of this Agreement or on account of any other reason.

§ 7.2.2 The Owner's auditors or other representatives will review and report in writing on the Construction Manager's final accounting within 45 days after delivery of the final accounting to the Design Agent and the Owner's Program Manager by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors or other representatives report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Design Agent will, within seven days after receipt of the written report of the Owner's auditors or other representatives, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Design Agent's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Design Agent is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors or other representatives report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request an initial decision of the disputed pursuant to Section 15.2 of A201-2007, and if necessary thereafter, mediation. A request for initial decision shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Design Agent's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Design Agent's final Certificate for Payment.

## § 7.2.4 Intentionally omitted.

§ 7.2.5 Acceptance of Final Payment by the Construction Manager, a Subcontractor, or supplier shall constitute a waiver of claims by that payee, except those previously made in writing and identified by the payee in writing as unsettled at the time of such Final Payment. Such waiver is in addition to the other waivers contained in this Agreement and the Contract Documents.

#### ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager shall purchase and maintain insurance and provide bonds as set forth in the Solicitation and in Article 11 of AIA Document A201-2007.

*(State bonding requirements, if any, and limits required in Article 11 of AIA Document A201-2007.)*

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

#### ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be determined in accordance with the provisions of the State Purchases Act, R.I. Gen. Laws §§ 37-2-1 et seq., the "Public Works Arbitration Act," R.I. Gen. Laws §§ 37-16-1 et seq., the "Administrative Procedures Act," R.I. Gen. Laws §§ 45-35-1 et seq., and the State of Rhode Island Procurement Regulations.

#### § 9.3 Initial Decision Maker

The Purchasing Agent appointed pursuant to the provisions of the "State Purchases Act," R.I. Gen. Laws §§ 37-2-1 et seq., will serve as Initial Decision Maker in accordance with the provisions of the State Purchases Act, State of Rhode Island Procurement Regulations, and Section 15.2 of AIA Document A201-2007. For any Claim (as defined in Section 15.1.1 of AIA Document A201-2007) not resolved by such procedures, the parties shall use their best efforts to resolve such Claim by mediation in Providence, Rhode Island. Any party may apply in writing to the Presiding Justice of the Providence County Superior Court, with a copy to the other parties, with a request for the court to appoint a mediator, and the costs of the mediator shall be borne equally by all of the parties. In the event that the parties are unable to resolve any and all Claims through mediation, then any party may pursue the legal remedies provided in § 9.2

#### ARTICLE 10 TERMINATION OR SUSPENSION

##### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders, and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders, or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order, or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007. The Contract may also be terminated by the Owner: (i) in the event of the unavailability of appropriated funds; (ii) in the absence of a determination of continued need; or (iii) as otherwise provided in the State of Rhode Island Procurement Regulations General Conditions of Purchase or other applicable law.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

#### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. The Work may also be suspended by the Owner as provided in the State of Rhode Island Procurement Regulations and/or General Conditions of Purchase. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

### **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201-2007.

#### **§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.3 Governing Law**

This Contract and the Contract Documents are subject to, and governed by, the laws of the State of Rhode Island, including without limitation, all procurements statutes and regulations, and applicable federal and state law, all of which are incorporated into this Contract by this reference. In the event of any conflict between any provision of the Rhode Island General Laws or the Rhode Island Procurement Regulations and any Supplementary or other

Conditions of the Contract or other Contract Documents, the Rhode Island General Laws and Procurement Regulations will control.

#### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns. The Construction Manager shall not assign this Agreement or delegate its responsibilities under this Agreement without the Owner's prior written consent. If the Construction Manager attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

#### § 11.5 Third-Party Beneficiary

The User Agency is a disclosed third-party beneficiary of this Contract and shall have all of the rights and benefits to which such a party is entitled hereunder and under applicable law.

#### § 11.6 Continuation of Work

Notwithstanding the event of any claim, or other matter in question arising out of or relating to this Agreement or the breach thereof, the Construction Manager shall continue to perform its services hereunder, and the Owner shall continue to make payments in accordance with this Agreement for all undisputed items of work.

**§ 11.7 Liens.** The Owner is the State of Rhode Island, acting by and through its Department of Administration Division of Capital Projects and Property Management, and the User Agency is the Department of Human Services, and therefore, pursuant to the provisions of R.I. Gen. Laws § 34-28-31, mechanics liens may not be placed against the Project.

**§ 11.8 Representations.** The Construction Manager represents and warrants to the Owner, in addition to any other representations and warranties of the Construction Manager elsewhere in the Contract Documents:

- .1 The Construction Manager and its Subcontractors are each financially solvent, able to pay their debts as they mature, and possessed of sufficient working capital to perform their obligations under the Contract Documents.
- .2 The Construction Manager and its Subcontractors are each able to furnish the materials, equipment, and labor required to complete the Project as required under the Contract Documents.
- .3 The Construction Manager has visited the site of the Project, familiarized itself with the local and special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents.
- .4 The Construction Manager possesses the requisite level of experience and expertise in the business administration, construction, and superintendence of projects of the size, complexity, and nature of the Project, and it will perform the Work with the care, skill, and diligence of such a contractor.

**§ 11.9 Survival.** The representations and warranties of the Construction Manager in the Contract Documents will survive the execution and delivery of this Agreement, any termination of the Agreement, and the final completion of the Work.

**§ 11.10 Change Orders.** Any Change Orders or other Modifications must be approved in writing by the Owner.

### ARTICLE 12 SCOPE OF THE AGREEMENT

**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 12.2** The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified by the Owner
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by the Owner
- .3



- 3 Other documents:  
(List other documents, if any, forming part of the Agreement.)

«(a) The Solicitation issued by the Awarding Authority, including without limitation, the Request for Proposals, the Instructions to Bidders, the Specifications and Drawings, any Addenda, and the Bid Checklist (with applicable forms)

(b) The Bid Proposal

(c) The RIVIP Bidder Certification Cover Form

(d) The Purchase Order issued by the Awarding Authority. »

§ 12.3 Wherever in this Agreement and the Contract Documents a reference is made to AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, it shall mean, for all purposes, such agreement, as modified by the Owner.

§ 12.4 Wherever in this Agreement and the Contract Documents a reference is made to AIA Document A201-2007, General Conditions of the Contract for Construction, it shall mean, for all purposes, such general conditions, as modified by the Owner.

This Agreement is entered into as of the day and year first written above; provided, however, that this Agreement shall not become a binding agreement until the Awarding Authority has issued a Purchase Order. The person signing for the Construction Manager below represents that he or she has been duly authorized to execute this Agreement on behalf of the Construction Manager.

THE STATE OF RHODE ISLAND, acting by and through  
Its Department of Administration, Capital Projects and  
Property Management

OWNER (Signature)

«Namvar Moghadam, Associate Director »« »  
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »« »  
(Printed name and title)

# DRAFT AIA® Document A201™ - 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name, location, and detailed description)

Veterans Home Project  
Bristol, Rhode Island

### THE OWNER:

The State of Rhode Island, acting by and through the Department of Administration,  
Division of Capital Projects and Property Management, on behalf of the User Agency  
One Capitol Hill, Second Floor  
Providence, Rhode Island 02908-5855  
(401) 222-8207 (telephone)

### THE USER AGENCY

(Name, legal status, address, telephone and facsimile numbers, and web address)  
Rhode Island Department of Human Services

### THE DESIGN AGENT:

(Name, legal status, address, telephone and facsimile numbers, and web address)

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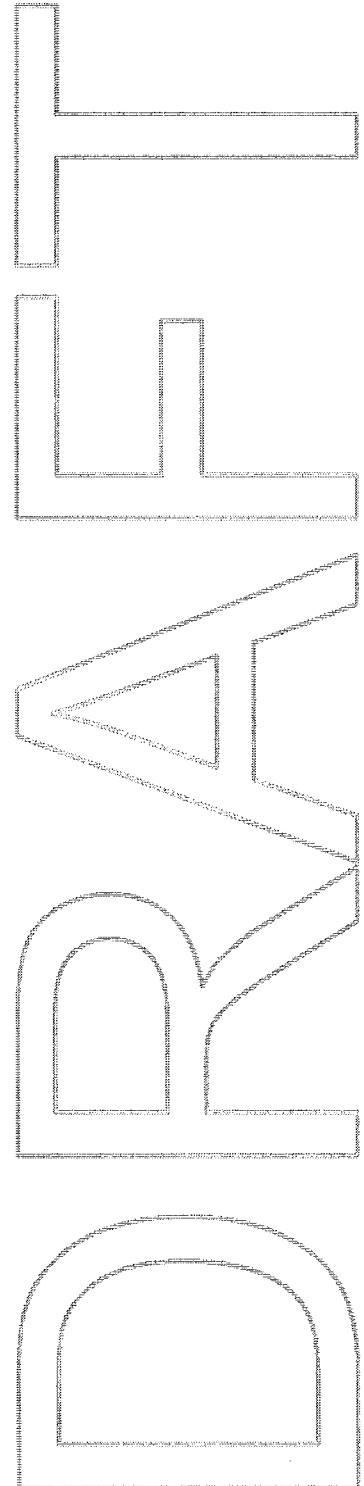
### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (the Agreement) and consist of the Agreement (and the documents enumerated therein), Conditions of the Contract (General, Supplementary, if any, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Design Agent.

#### **§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Design Agent or the Design Agent's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Design Agent or the Design Agent's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Design Agent shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Design Agent's duties.

#### **§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill all of the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design Agent and the Design Agent's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; the Contractor shall perform all Work reasonably inferable from the Contract Documents as being necessary to produce the indicated results.

**§ 1.2.2** Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**§ 1.2.4** In the event of any conflicts or discrepancies among the Contract Documents, the provisions of the Contract Documents will be interpreted in the following order of priority:

1. Modifications (if any).
2. The Purchase Order.
3. The Agreement.
4. The Solicitation., including any Addenda, and the Specifications and Drawings
5. The Supplementary Conditions (if any).
6. The General Conditions.
7. The Bid Proposal.

**§ 1.2.5** In the event of any conflicts or discrepancies between the Contract Documents and the State of Rhode Island Procurement Regulations or any provision of the Rhode Island General Laws, the State of Rhode Island Procurement Regulations and the Rhode Island General Laws will control.

**§ 1.2.6** In the event of any inconsistency between the Drawings and Specifications, the better quality or greater quantity of Work shall be provided.

**§ 1.2.7** The Owner will be the final decision maker for any and all interpretations.

### **§ 1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 INTERPRETATION**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**§ 1.5.1** The Owner and the User Agency shall have a perpetual license to utilize the Drawings, Specifications, and other documents, including electronic or digital documents, prepared by the Design Agent and the Design Agent's consultants, for the execution of the Project and shall have and retain all rights to use them and reproduce them for the production and maintenance of the Work described therein. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Design Agent's or Design Agent's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Design Agent and the Design Agent's consultants.

### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as

otherwise provided in Section 4.2.1, the Design Agent does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2 Intentionally omitted.**

**§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1 Intentionally omitted.**

**§ 2.2.2** The Contractor shall secure and pay for permits and fees, necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.2.3** If required for the Work in the discretion of the Owner, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of any information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.4** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.2.5 Intentionally Omitted**

**§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

**§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Agent's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Design Agent. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**ARTICLE 3 CONTRACTOR**

**§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Agent in the Design Agent's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Design Agent any errors, inconsistencies or omissions discovered by or made known to the Contractor or additional Drawings, Specifications, or instructions required to define the Work in greater detail to permit the proper progress of the Work as a request for information in such form as the Design Agent may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Design Agent and the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Design Agent or Owner may require.

**§ 3.2.3.1** Omissions from the Drawings and Specifications of items obviously needed to perform the Work properly, such as attachments, bolts, hangers, and other fastening devices, shall not relieve the Contractor from the obligation to furnish and install such items.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Design Agent issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3 or 3.2.3.1, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Design Agent for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

**§ 3.2.4.1** The Contractor shall not make any changes without prior written authorization from the Design Agent and the Owner.

**§ 3.2.5** The Owner is entitled to reimbursement from the Contractor for amounts paid to the Design Agent for evaluating and responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Design Agent and shall not proceed with that portion of the Work without further written instructions from the Design Agent. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely

responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### **§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Whenever the Contractor has an obligation to provide labor and materials under this Agreement, the Contractor, at a minimum, shall provide the labor for, and furnish and install and place in operation all items, including without limitation, all proper connections.

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Design Agent in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Design Agent and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

#### **§ 3.5 WARRANTY**

The Contractor warrants to the Owner and Design Agent that materials and equipment furnished under the Contract will be of first quality, prime manufacture, and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly authorized, may be considered defective and, unless a longer period is required elsewhere in the Contract Documents, will be repaired and/or replaced, at the option of the Owner, for a period of one year following Final Completion of the Work. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor or its Subcontractors, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Design Agent, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### **§ 3.6 TAXES**

**§ 3.6.1** The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

**§ 3.6.2** The State of Rhode Island is exempt from payment of any federal or state excise, transportation, or sales tax. The Rhode Island Department of Administration Division of Purchases will furnish Exemption Certificates upon request.

**§ 3.6.3** Pursuant to R.I. Gen. Laws § 44-1-6, the Owner shall withhold payment from the Contractor if the Contractor does not maintain a regular place of business in Rhode Island in the amount of three (3%) percent of the Contract Sum until thirty (30) days after Final Completion and compliance by the Contractor with the requirements of such section.

#### **§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections required by the Rhode Island State Building Code necessary for proper execution and completion of the Work that are customarily secured after execution of the

Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for obtaining the Certificate of Occupancy from the appropriate governmental authorities.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** The Contractor shall promptly notify the Design Agent and the Owner if the Contractor becomes aware that the Contract Documents are not in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Design Agent before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Design Agent will promptly investigate such conditions and, if the Design Agent determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Design Agent determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Agent shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Design Agent's determination or recommendation, that party may proceed as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Design Agent. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 ALLOWANCES**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Design Agent the name and qualifications of a proposed superintendent. The Design Agent may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Design Agent has reasonable objection to the proposed superintendent or (2) that the Design Agent requires additional time to review. Failure of the Design Agent to reply within the 14 day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Design Agent has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, within 20 days after the issuance of the Purchase Order, shall prepare and submit for the Owner's and Design Agent's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals, not less frequently than monthly, as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall certify on the initial schedule and all revised schedules that they comply with the Contract Documents.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, within 20 days after the issuance of the Purchase Order, and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Design Agent's approval. The Design Agent's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Design Agent reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Design Agent.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Design Agent and shall be delivered to the Design Agent for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Design Agent is subject to the limitations of Section 4.2.7. Informational

submittals upon which the Design Agent is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Design Agent without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Design Agent Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Design Agent or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Design Agent that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Design Agent.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Design Agent's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Design Agent in writing of such deviation at the time of submittal and (1) the Design Agent has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Design Agent's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Design Agent on previous submittals. In the absence of such written notice, the Design Agent's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Design Agent will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design Agent. The Owner and the Design Agent shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Design Agent have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Design Agent will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

**§ 3.12.11** The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Design Agent for evaluation of resubmittals.

### **§ 3.13 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and any restrictions imposed by the User Agency or the Owner, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Design Agent access to the Work in preparation and progress wherever located.

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Design Agent harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Design Agent. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Design Agent and the Owner.

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, the State of Rhode Island, and each executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof, including without limitation, any department, division, agency, commission, board, office, bureau, committee, authority, educational institution, school, water, or fire district, or other agency of Rhode Island state, municipal, or local government that exercises governmental functions, any other governmental authority, and any quasi-public corporation and/or body corporate and politic, their respective elected or appointed officials, members, employees, and agents, Design Agent, Design Agent's consultants, and agents and employees, Owner's Program Manager, Owner's Program Manager, consultants, and agents and employees, or any of them from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees and costs of mediation, arbitration and/or litigation, arising out of or resulting from performance of the Work, and/or the obligations of the Contractor under the Contract Documents, but only to the extent caused by the acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 Without limiting the generality of the foregoing, the defense and indemnity set forth in this Section 3.18 includes, without limitation, all liabilities, damages, losses, claims, demands, and actions on account of bodily injury, death, or property loss to a person or entity indemnified hereunder or any other persons or entities, whether based upon, statutory (including, without limitation, workers compensation), contractual, tort, or other liability of any person or entity so indemnified.

§ 3.18.4 The remedies set forth herein shall not deprive any person indemnified hereunder of any other indemnity action, right, or remedy otherwise available to any such person or entity at common law or otherwise.

§ 3.18.5 The Contractor will include the indemnity set forth in this Section 3.18, without modification, in each Subcontract with any Subcontractor.

§ 3.18.6 Notwithstanding any other language in the Contract Documents to the contrary, the indemnity hereunder shall survive Final Completion of the Work and final payment under the Agreement and shall survive any termination of the Agreement.

#### ARTICLE 4 DESIGN AGENT

##### § 4.1 GENERAL

§ 4.1.1 The Design Agent is the person lawfully licensed to practice his or her profession in the State of Rhode Island or an entity lawfully practicing its profession in the State of Rhode Island and identified in the Contract Documents as the Design Agent. The term "Design Agent" means the Design Agent or the Design Agent's authorized representative.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Design Agent as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Design Agent. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Design Agent is terminated, the Owner shall employ a successor design agent as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Design Agent.

##### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Design Agent will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction through the date the Design Agent issues the final Certificate for Payment and continuing until the expiration of the warranty period in § 3.5. The Design Agent will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Design Agent will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Design Agent will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Agent will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.2.1 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Design Agent for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 4.2.3 On the basis of the site visits, the Design Agent will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Design Agent will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Agent will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Design Agent about matters arising out of or relating to the Contract. Communications by and with the Design Agent's consultants shall be through the Design Agent. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Design Agent's evaluations of the Contractor's Applications for Payment, the Design Agent will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Design Agent has authority to reject Work that does not conform to the Contract Documents. Whenever the Design Agent considers it necessary or advisable, the Design Agent will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Agent nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Agent to the Contractor, Subcontractors, material and equipment-suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Design Agent will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Design Agent's action will be taken in accordance with the submittal schedule approved by the Design Agent or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Design Agent's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Design Agent's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Design Agent's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Agent, of any construction means, methods, techniques, sequences or procedures. The Design Agent's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Design Agent will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Design Agent will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Design Agent will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Design Agent agree, the Design Agent will provide one or more project representatives to assist in carrying out the Design Agent's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Design Agent will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Design Agent's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Design Agent will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Design Agent will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Design Agent's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Design Agent will review and respond to requests for information about the Contract Documents. The Design Agent's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Design Agent will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Design Agent the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Design Agent may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Design Agent has reasonable objection to any such proposed person or entity or (2) that the Design Agent requires additional time for review. Design Agent

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Design Agent has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Design Agent has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Design Agent has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Design Agent makes reasonable objection to such substitution.

### § 5.2.5 MANUFACTURERS AND FABRICATORS

§ 5.2.5.1 Not later than 10 days after the date of commencement of the Work, the Contractor shall furnish in writing to the Owner through the Design Agent the names of the manufacturers or fabricators for certain products,

equipment, and systems identified in the Specifications and, where applicable, the name of the installing Subcontractor. The Design Agent may reply within 14 days to the Contractor in writing, stating: (i) whether the Owner or the Design Agent has reasonable objection to any such proposed person manufacturer or fabricator; or (ii) whether the Design Agent requires additional time to review.

**§ 5.2.5.2** The Contractor shall not contract with a proposed manufacturer, fabricator, or Subcontractor to whom the Owner or Design Agent has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.5.3** If the Owner or Design Agent has an objection to a manufacturer, fabricator, or Subcontractor proposed by the Contractor, the Contractor shall propose another to whom the Owner or Design Agent has no objection.

**§ 5.2.5.4** The Contractor shall not substitute a manufacturer, fabricator, or Subcontractor previously selected if the Owner or Design Agent makes reasonable objection to such substitution.

### **§ 5.3 SUBCONTRACTUAL RELATIONS**

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Design Agent. Upon the request of the User Agency and/or the Owner, the Contractor shall provide the User Agency and /or the Owner with copies of each subcontract agreement. Each subcontract agreement shall preserve and protect the rights of the Owner and Design Agent under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

## § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Design Agent apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Design Agent will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Design Agent; a Construction Change Directive requires agreement by the Owner and Design Agent and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Design Agent alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

## **§ 7.2 CHANGE ORDERS**

**§ 7.2.1** A Change Order is a written instrument prepared by the Design Agent and signed by the Owner, Contractor and Design Agent stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Subsequent to the approval of a Change Order as provided in § 7.1.2, whether such Change Order changes the Contract Sum or Contract Time or both, no additional claim related to such Change Order will be considered by the Owner. Any change, once incorporated into a Change Order, is all inclusive, and includes all factors that could have been considered at the time of the Change Order such as Project impact or schedule "ripple" effect..

## **§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Design Agent and signed by the Owner and Design Agent, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

**§ 7.3.4** Intentionally omitted.

**§ 7.3.5** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design Agent of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.6** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Design Agent shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Design Agent may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of delivery;
- .3 Rental costs of machinery and equipment;
- .4 Costs of premiums for all bonds and insurance, permit fees related to the Work.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Design Agent. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Design Agent will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Design Agent determines, in the Design Agent's professional judgment, to be reasonably justified. The Design Agent's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Design Agent concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Design Agent will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 MINOR CHANGES IN THE WORK

The Design Agent has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Design Agent and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established pursuant to § 3.1 of the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Design Agent in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean working day, excluding weekends and legal holidays.

#### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Design Agent, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, then the Contract Time shall be extended by Change Order for such reasonable time as the Design Agent may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

Within 20 days of the issuance of the Purchase Order, and promptly if revision is necessary from time to time as a result of a Change Order, the Contractor shall submit to the Design Agent and the Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Design Agent and Owner may require. This schedule, if and when approved by the Design Agent and the Owner in writing, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least 10 days before the date established for each progress payment, the Contractor shall submit to the Design Agent and the Owner for approval an itemized Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Design Agent may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 All Applications for Payment for Change Orders must be accompanied by a Notice of Change in Purchase Order issued by the Owner, and if directed by the Owner, by the User Agency.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The form of Application for Payment shall be AIA Document G702, Application and Certification for Payment, supported by AIA Document G702A, Continuation Sheet.

§ 9.3.1.4 Until final payment, the Owner shall pay ninety-five (95%) percent of the amount due the Contractor on account of progress payments.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor shall immediately satisfy any lien, claim, or encumbrance against the site where the Project is located and indemnify the Owner from and against all resulting costs and expenses, including without limitation, attorneys' fees

### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Design Agent will, within 7 days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Design Agent

determines is properly due, or notify the Contractor and Owner in writing of the Design Agent's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Design Agent to the Owner, based on the Design Agent's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Design Agent's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Design Agent. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Design Agent has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 9.4.3** The Contractor must submit all product literature, and material and color samples with each Application for Payment, or as otherwise required by the Owner.

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.5.1** The Design Agent will withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Design Agent's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Design Agent is unable to certify payment in the amount of the Application, the Design Agent will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Design Agent cannot agree on a revised amount, the Design Agent will promptly issue a Certificate for Payment for the amount for which the Design Agent is able to make such representations to the Owner. The Design Agent may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Design Agent's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 any other failure to comply with the obligations of the Contractor under the Contract Documents.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.3** If the Design Agent withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Design Agent and the Design Agent will reflect such payment on the next Certificate for Payment.

#### **§ 9.6 PROGRESS PAYMENTS**

**§ 9.6.1** After the Design Agent has issued a Certificate for Payment and the Owner has approved the Certificate for Payment in writing, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Design Agent.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than 7 days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Design Agent will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Design Agent and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Owner shall have the right to withhold payment(s) to the Contractor in the event that any Subcontractors or material and equipment suppliers have not been properly paid. Neither the Owner nor Design Agent shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### § 9.7 FAILURE OF PAYMENT

If the Design Agent does not issue a Certificate for Payment, through no fault of the Contractor, within 7 days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within 7 days after the date established in the Contract Documents the amount certified by the Design Agent or awarded by binding dispute resolution, then the Contractor may, upon 7 additional days' written notice to the Owner and Design Agent, make a claim for payment as provided under the provisions of "Prompt Payment by Department of Administration," R.I. Gen. Laws §§ 42-11.1-1 et seq.

#### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design Agent a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Design Agent will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design Agent's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Design Agent. In such case, the Contractor shall then submit a request for another inspection by the Design Agent to determine Substantial Completion. The Design Agent will perform no more than two (2)

inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Design Agent for any additional inspections.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Design Agent will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Design Agent as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Design Agent.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Design Agent shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Agent will promptly make such inspection and, when the Design Agent finds the Work acceptable under the Contract Documents and the Contract fully performed, the Design Agent will promptly issue a final Certificate for Payment stating that to the best of the Design Agent's knowledge, information and belief, and on the basis of the Design Agent's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Design Agent's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The Design Agent will perform no more than two (2) inspections to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Design Agent for any additional inspections.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Design Agent (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written

statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Design Agent so confirms, the Owner shall, upon application by the Contractor and certification by the Design Agent, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Design Agent prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 claims permitted under the State of Rhode Island Department of Administration Division of Purchases General Conditions of Purchase.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.11 The Contractor and the Contractor's surety shall be liable for and shall pay the Owner as liquidated damages the sums specified in the Solicitation and Bid Form.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and in consultation with the appropriate governmental authorities..

§ 10.2.4.1 When use or storage of explosives, or other hazardous materials, substances or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the User Agency and the Owner reasonable advance notice.

§ 10.2.4.2 If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Design Agent or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Design Agent.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Design Agent in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Design Agent the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Design Agent will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Design Agent has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Design Agent have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the extent permitted by the provisions of R.I. Gen. Laws §§ 9-31-1 *et seq.*, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Design Agent, Design Agent's consultants and agents and

employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Intentionally omitted.

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as is specified in the Solicitation and as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.1.2 The Contractor's liability insurance shall include all major coverages and be on a comprehensive-general liability basis.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance as specified in the Solicitation and as otherwise acceptable to the Owner shall be filed with the Owner and the User Agency prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner and the User Agency. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the User Agency, and their elected and appointed officials, members, employees, and agents, the Design Agent and the Design Agent's consultants as additional insureds for claims caused in whole or in part by the Contractor's acts or omissions during the Contractor's operations; and (2) the Owner, the User Agency, and their elected and appointed officials, members, employees, and agents, as additional insureds for claims caused in whole or in part by the Contractor's acts or omissions during the Contractor's completed operations.

§ 11.1.5 The Contractor shall be responsible for the prompt payment to the Owner of any deductible amounts under any insurance policies required under the Contract Documents for claims made pursuant to such policies.

§ 11.2 OWNER'S LIABILITY INSURANCE The Contractor shall furnish the Owner and the User Agency, through the Design Agent, an insurance certificate providing Owner's Protective Liability extended to include the interests of the Design Agent, and to protect the Owner, User Agency, and Design Agent from any liability which might be incurred against any of them as a result of any operation of the Contractor or Subcontractors or their employees or anyone for whom either the Contractor or Subcontractors are responsible. Such insurance shall be written for the same limits as the Contractor's comprehensive general liability insurance and shall include the same coverage.

### § 11.3 PROPERTY INSURANCE

§ 11.3.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the User Agency, the Contractor, Subcontractors and Sub-subcontractors in the Project. If the Owner and/or the User Agency incur any damages by failure of the Contractor to maintain such insurance, then the Contractor shall bear all reasonable cost resulting from such failure.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design Agent's and Contractor's services and expenses required as a result of such insured loss.

#### § 11.3.1.2 Intentionally omitted.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 Intentionally omitted.

§ 11.3.3 Intentionally omitted.

§ 11.3.4 Intentionally omitted.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Owner and the User Agency.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Contractor waives all rights against the Owner and the User Agency and any of their subcontractors, sub-subcontractors, agents and employees, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under this property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this

power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Contractor as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Solicitation.

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

#### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

##### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If a portion of the Work is covered contrary to the Design Agent's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Design Agent, be uncovered for the Design Agent's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Design Agent has not specifically requested to examine prior to its being covered, the Design Agent may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

##### **§ 12.2 CORRECTION OF WORK**

###### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Design Agent or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Design Agent's services and expenses made necessary thereby, shall be at the Contractor's expense.

###### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Design Agent, the Owner may correct it in accordance with Section 2.4.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one year from the date of Substantial Completion, the Design Agent will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the State of Rhode Island

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof, including without limitation, any department, division, agency, commission, board, office, bureau, authority, school, water, or fire district, or other agency of Rhode Island state or local government that exercises governmental functions, any other governmental authority, and any quasi-public corporation and/or body corporate and politic. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice, or when received, if manually delivered or transmitted by electronic mail or facsimile to the last such address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Design Agent or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

## **§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Design Agent timely notice of when and where tests and inspections are to be made so that the Design Agent may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

**§ 13.5.2** If the Design Agent, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Design Agent will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Design Agent of when and where tests and inspections are to be made so that the Design Agent may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Design Agent's services and expenses shall be at the Contractor's expense.

**§ 13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Design Agent.

**§ 13.5.5** If the Design Agent is to observe tests, inspections or approvals required by the Contract Documents, the Design Agent will do so promptly and, where practicable, at the normal place of testing.

**§ 13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## **§ 13.6 INTEREST**

No interest shall be due or payable on account of any payment due or unpaid under the Contract Documents except in accordance with the provisions of "Prompt Payment by Department of Administration," R.I. Gen. Laws §§ 42-11.1-1 *et seq.*

## **§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 TERMINATION BY THE CONTRACTOR**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Design Agent has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1

**§ 14.1. Intentionally omitted.**

**§ 14.1.3** If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven days' written notice to the Owner and Design Agent, terminate the Contract and recover from the Owner payment for Work executed.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Design Agent, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

**§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards or fails to comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of a breach of or fails to comply with a provision of the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Agent's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

**§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2 Intentionally omitted.** The Owner shall not be liable to the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy against the Owner for delays shall be the allowance of additional time for completion of the Work. »

**§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Design Agent. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Design Agent will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.5.3 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

§ 15.1.5.4 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages due to the Owner's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims shall be referred to the Initial Decision Maker for initial decision. The Purchasing Agent appointed pursuant to the provisions of the "State Purchases Act," R.I. Gen. Laws § 37-2-1 et seq., will serve as the Initial Decision Maker in accordance with the provisions of the State Purchases Act, State of Rhode Island Procurement Regulations, and this Section 15.2. An initial decision shall be required as a condition precedent to mediation and binding dispute resolution of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Design Agent of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may apply for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, apply in writing to the Presiding Justice of the Providence County Superior Court, with a copy to the other parties, with a request for the court to appoint a mediator, and the costs of the mediator shall be borne equally by all of the parties.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** Intentionally omitted.

### **§ 15.3 MEDIATION**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which shall be administered by the Presiding Justice of the Providence County Superior Court. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the court. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **§ 15.4 Intentionally Omitted.**

#### **§ 15.4.4 CONSOLIDATION OR JOINDER**

**§ 15.4.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

### **§ 16 COMPLIANCE WITH APPLICABLE LAW**

The Contractor and its Subcontractors shall comply with all applicable federal, state, and local laws.

Rhode Island Veterans Home - Pre-Construction Fee Schedule				
Activity	Team Member	Total Hours	Rate	Fee
<b>Attend Project Meetings</b>	Project Executive			\$0
	Project Manager			\$0
	Project Estimator			\$0
	Project Scheduler			\$0
	Other			
Subtotal				\$0
<b>Design Review and Coordination</b>	Project Executive			\$0
	Project Manager			\$0
	Project Estimator			\$0
	Project Scheduler			\$0
	Other			
Subtotal				\$0
<b>Project Schedule</b>	Project Executive			\$0
	Project Manager			\$0
	Project Estimator			\$0
	Project Scheduler			\$0
	Other			
Subtotal				\$0
<b>Project Budget Review</b>	Project Executive			\$0
	Project Manager			\$0
	Project Estimator			\$0
	Project Scheduler			\$0
	Other			
Subtotal				\$0
<b>Reimbursables</b>				\$0
<b>TOTAL</b>				<b>\$0</b>

# **Rhode Island Veterans Home - General Conditions/General Requirements Schedule**

<i>General Conditions</i>			<i>Estimated CM Cost</i>	<i>Notes:</i>
<b>A Personnel</b>	<b>Hours</b>	<b>Rate</b>		
1 Project Executive	0	0	\$ -	
2 Project Manager			\$ -	
3 Assistant Project Manager			\$ -	
4 General Superintendent			\$ -	
5 Safety Officer			\$ -	
6 Job Site Supervision			\$ -	
7 Field Engineering			\$ -	
8 Project Clerical/Secretary			\$ -	
9 Timekeeper			\$ -	
10 Shop Drawing Coordination			\$ -	
11 Quality Control			\$ -	
12 Elevator Operators			\$ -	
13 Maintenance Engineers			\$ -	
14 Hoist Engineers			\$ -	
15 Master Mechanic			\$ -	
16 Flagmen			\$ -	
17 Watchmen and Site Security			\$ -	
18 Premium Time as may be required			\$ -	
19 Relocation			\$ -	
20 Travel, Meals, Lodging			\$ -	
21 Vehicles			\$ -	
22 Full-time laborer			\$ -	
23 Travel, Meals, & Lodging to/from Job Site			\$ -	
24 Other			\$ -	
<b>SUBTOTAL</b>			\$ -	
<b>B Engineering and Testing:</b>				
1 Building Layout			\$ -	
2 Baseline Layout			\$ -	
3 Site Survey			\$ -	
4 Routine Inspection			\$ -	
5 Soil Testing			\$ -	
6 Concrete Testing			\$ -	
<b>SUBTOTAL</b>			\$ -	
<b>C Field Office Expense:</b>				
1 Job Office/Trailer			\$ -	
2 Architect/Owner Office			\$ -	
3 Conference room for 20 people			\$ -	
4 Storage Areas and Shed			\$ -	
5 Office Equipment & Computers for CM use			\$ -	
6 Job Office Supplies For CM use			\$ -	
7 Radios			\$ -	
8 First Aid & Safety			\$ -	
9 Telephone			\$ -	
10 Postage & Messenger Service			\$ -	
11 Photographs			\$ -	
12 Other			\$ -	
<b>SUBTOTAL</b>			\$ -	
<b>D Temporary Construction, Barricades, Signs &amp; Utilities</b>				
1 Temporary Electric Services and Lighting (kWh usage & temporary electric hookup)			\$ -	
2 Temporary Heat (Fuel Usage Costs, temporary equipment & hook up)			\$ -	
3 Temporary Water (water usage costs & temporary water hookup)			\$ -	
4 Temporary Sanitary Facilities			\$ -	
5 Temporary Fire Protection & Extinguishers			\$ -	
6 Protection of Permanent Elevators			\$ -	
7 Rubbish Chutes			\$ -	
8 Temporary Stairs, Ladders & Floors			\$ -	
9 Temporary Fences & Barricades			\$ -	
10 Project Signs			\$ -	
11 Jobsite Signs			\$ -	
12 Other Temporary Construction			\$ -	
<b>SUBTOTAL</b>			\$ -	
<b>E Clean Up:</b>				
1 Trash Removal, Dumpsters			\$ -	
2 Daily Site Cleaning			\$ -	

3	Pest and Rodent control	\$	-	
4	Final Interior Cleaning	\$	-	
5	Final Exterior Cleaning	\$	-	
6	Final Glass Cleaning	\$	-	
7	Other	\$	-	
	<b>SUBTOTAL</b>	\$	-	
F	<b>Insurance:</b>			
1	Employer's Liability	\$	-	
2	Comprehensive General Liability	\$	-	
3	Automobile	\$	-	
4	Workmen's Compensation	\$	-	
5	Other	\$	-	
	<b>SUBTOTAL</b>	\$	-	
G	<b>Project Closeout:</b>			
1	Punchlist	\$	-	
2	Record Drawings	\$	-	
3	Manuals and Operating Instructions	\$	-	
4	Warranties	\$	-	
5	Other	\$	-	
	<b>SUBTOTAL</b>	\$	-	
H	<b>Permits</b>			
1	Building	\$	-	
2	Certificate of Occupancy	\$	-	
	<b>SUBTOTAL</b>	\$	-	
I	<b>Miscellaneous</b>			
1	Ceremonies	\$	-	
2	Other	\$	-	
	<b>SUBTOTAL</b>	\$	-	
	<b>Total General Conditions/General Requirements</b>	\$	-	



State of Rhode Island  
Division of Purchases

Public Works  
Bid Preparation Checklist

Date: 10/7/2014

Bid#: 7548998 PHII

Title: Construction Management at Risk (CMAR), Phase II – Rhode Island Veterans Home Facilities and Renovations – Bristol, Rhode Island

This checklist is provided to assist the bidder in preparing a bid proposal for submission. It is not a substitute for a thorough review of the Instruction to Bidders nor a comprehensive list of all bid proposal requirements. Each bidder is responsible to review the Instructions to Bidders and to comply with all requirements of the Solicitation.

**Bid Proposal Package:**

- ☒ RIVIP Bidder Certification Cover Form (completed) signed in ink
- ☒ Bid Form
  - All applicable blank spaces on the Bid Form have been completed
  - All Addenda have been acknowledged
  - Bid price printed legibly in ink (in both words and figures that match where specified)
  - Erasures or corrections have been initialed by person signing the Bid Form
  - Bid Form is signed in ink
- ☒ Bid Surety
  - Bid bond or certified check (for DOT projects, bid bond only)
  - Bid surety is five percent of the bid total (or such other specified amount)
  - Bid Bond is signed by the bidder and surety
  - Power of Attorney is attached to the Bid Bond showing the name of person who signed the surety bond
- ☐ Public Copy of bid proposal in pdf format on a read-only CD-R media disk
- ☐ General Contractor Apprenticeship Certification Form "2013-14" (for projects \$1,000,000 and greater) required at time of bid proposal submission

*Note: General Contractor Apprenticeship Re-Certification and Certification Form "2013-16" and Subcontractor Apprenticeship Certification Form "2013-15" are not required at time of bid proposal submission deadline.*

- ☐ Applicable professional licenses (as specified in the Solicitation)
- ☐ Rhode Island Contractor Registration Board No.
- ☒ All bid proposal documents in a sealed envelope with the specific Solicitation #, Solicitation title, and the bid proposal submission deadline marked in the upper left hand corner of the envelope
- ☒ Each bid proposal submitted in a separate sealed envelope
- ☒ Completed Form W-9
- ☐ Other \_\_\_\_\_

**Buyer Name:** Thomas Bovis

**Contact Information:** Thomas.bovis@purchasing.ri.gov